SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 71

THE UNITED STATES OF AMERICA, PETITIONER

vs.

FRANK LAUDANI

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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1a

In United States District Court
District of New Jersey

Criminal 7c

Title 40 U. S. C. Sec. 276-b.

THE UNITED STATES

vs.

FRANK LAUDANI and ALFREDO ROSSI

Docket Entries

1940

Jan. 12—Indictment for Compelling return of compensation for public work &c.

Jan. 13—Alfredo Rossi Bench Warrant issued.

Jan. 20—Alfredo Rossi Bench Warrant ret'd (not executed).

Feb. 1—Alfredo Rossi Ordered alias Bench Warrant issue (Forman) Alias Bench Warrant issued.

Feb. 6—Alfredo Rossi Alias Bench Warrant ret'd, (executed).

Mar. 18—Frank Laudani Plea—Not Guilty. Order bail continued.

Mar. 18—Alfredo Rossi Plea—Not Guilty. Order bail continued.

1941

Mar. 17—Frank Laudani—Hearing before Hon. Thomas Glynn Walker, U. S. District Judge.

Mar. 17—Frank Laudani Memo to be served Thursday.

Mar. 17—Frank Laudani Decision reserved.

Dec. 12—F. L.—Memorandum denying motion to quash (W) (See 12c).

Dec. 17—F. L.—Order dismissing demurrer and motion to quash is filed (W) (See 12c).

2a 1942

Mar. 5—Trial move before Hon. George A. Welsh, Judge as to both.

Mar. 5—Ordered motion to withdraw pleas of Not Guilty as to both granted.

Mar. 5—Ordered motion to quash each Indictment and each Count of each Indictment on behalf of both, denied (Ind. 7c, 8c, 9c, 10c, 11c).

Mar. 5—Order motion to consolidate all Indictments, denied.

1942

Mar. 5—Order motion to consolidate Indictments 7c, 8c, 9c, 10c, and 11c granted.
Mar. 5—Order recess 12.30 to 1.30 P. M.
Mar. 5—Both defendants entered pleas of Not Guilty.
Mar. 5—Order jury drawn. Order jury sworn. Jury sworn.
Mar. 5—Order alternate jurors drawn. Order Alternate Jurors sworn. Alternate jurors sworn.
Mar. 5—Swearing 1 witness.
Mar. 5—Ordered adjourned to March 6, 1942, at 10:00 A. M.
Mar. 6—Trial continued before Hon. George A. Welsh, Judge as to both.
Mar. 6—Swearing 1 witness.
Mar. 6—Ordered adjourned to Mar. 9, 1942 at 10:00 A. M.
Mar. 6—Requisition for witness. Issuing 1 subpoena. Issuing 1 copy.
Mar. 9—Trial continued before Hon. George A. Welsh, Judge as to both.
Mar. 9—Swearing 4 witnesses.
Mar. 9—Order recess 12:30 to 2:00 P. M.
Mar. 6—Ordered adjourned to Mar. 9, 1942, at 10:00 A. M.
Mar. 10—Trial continued before Hon. George A. Welsh, Judge as to both.
Mar. 10—Swearing 10 witnesses.
Mar. 10—Ordered recess 12:30 P. M. to 1:30 P. M.
3a Mar. 10—Ordered adjourned to March 11, 1943.
Mar. 11—Trial continued before Hon. George A. Welsh, Judge, as to both.
Mar. 11—Ordered motion to strike Counts 1, 6 and 7 granted.
Mar. 11—Ordered motion for direction of verdict of acquittal as to both denied.
Mar. 11—Ordered adjourned to March 12, 1942 at 10:00 A. M.
Mar. 12—Trial continued before Hon. George A. Welsh, Judge, as to both.
Mar. 12—Ordered renewal of motion for direction of verdict of acquittal denied.
Mar. 12—Swearing 4 witnesses.
Mar. 12—Ordered motion for mistrial denied.
Mar. 12—Ordered recess 12:15 P. M. to 1:05 P. M.
Mar. 12—Ordered renewal of motion for direction of verdict of Not Guilty denied.
Mar. 12—Ordered adjourned to March 16, 1942 at 10:00 A. M.
Mar. 12—Subpoenas ret'd (1).

1942
Mar. 13—Trial continued before Hon. George A. Welsh, Judge, as to both.
Mar. 13—Ordered Counts 1, 4, 5, 6 and 7 dismissed as to Frank Laudani.
Mar. 13—Ordered Counts 1, 6, and 7 dismissed as to Alfredo Rossi.
Mar. 16—Trial continued before Hon. George A. Welsh, Judge, as to both.
Mar. 16—Deputy Marshal Costella sworn to accompany jury to restaurant.
Mar. 16—Ordered U. S. Marshal provide luncheon for jury.
Mar. 16—Ordered recess 1:10 P. M. to 2:20 P. M.
4a Mar. 16—Verdict as to Frank Laudani. Guilty on Counts 2 and 3.
Mar. 16—Verdict as to Alfredo Rossi. Not Guilty on Counts 2, 3, 4 and 5.
Mar. 12—Ordered bail continued as to Frank Laudani to await sentence.
Mar. 12—Ordered to purchase luncheons for jurors filed (Lovett).
Mar. 17—Subpoenas ret'd (1).
Mar. 21—Brief filed as to both defendants.
Mar. 27—Frank Laudani — Sentence — Nine months in a Corr. Institution on each of Counts 2 and 3 of the Indictment (Welsh).
Mar. 27—Frank Laudani Ordered sentence to run concurrently (Welsh).
Mar. 27—Frank Laudani Ordered that a certified copy of this signed judgment serve as the commitment of the defendant (Welsh).
Mar. 27—Frank Laudani—Warrant of Commitment issued. Duplicate.
Mar. 30—Frank Laudani—Notice and Grounds of Appeal filed.
Apr. 10—Subpoenas ret'd (1).
Apr. 30—Frank Laudani—Consent and Order extending time to settle and file Bill of Exceptions and file Assignments of Error filed (Fake).
June 15—F. L. Assignments of Error filed.
June 15—F. L.—Order to turn over testimony to Harold Simandl, Esq., attorney for defendant (Fake).
June 15—F. L. Bill of Exceptions filed.
June 22—F. L. Order extending time for filing the Record of Appeal filed (Fake).

5a —In United States District Court, District of New Jersey

Criminal 8c

Title 40 U. S. C., Sec. 276–b.

THE UNITED STATES

vs.

FRANK LAUDANI, ALFREDO ROSSI
and MATTEO VIAGGIO

Docket Entries

1940

Jan. 12—Indictment for Compelling return of compensation for public work &c.
Jan. 13—M. V. Bench Warrant issued.
Jan. 20—M. V. Bench Warrant ret'd (not executed).
Feb. 1—M. V. Ordered alias Bench Warrant issue (Fn). Alias Bench Warrant issued.
Feb. 6—M. V. Alias Bench Warrant ret'd (executed).
Mar. 18—A. R. Plea—Not Guilty.
Mar. 18—F. L. Plea—Not Guilty.
Mar. 18—M. V. Plea—Not Guilty.

1941

Mar. 17—F. L. Hearing before Hon. Thomas Glynn Walker, U. S. Dist. Judge.
Mar. 17—F. L. Memo. to be served Thursday.
Mar. 17—F. L. Decision reserved.
Dec. 12—F. L.—Memorandum denying motion to quash (W) (See 12c).
Dec. 17—F. L.—Order dismissing demurrer and motion to quash filed (W) (See 12c).

6a 1942

Mar. 5—Trial moved before Hon. George A. Welsh, Judge as to all Ordered—motion to withdraw pleas of Not Guilty as to all granted.
Mar. 5—Ordered—motion to quash each Indictment and each count of each Indictment (7c, 8c, 9c, 10c, and 11c) on behalf of all defendants denied.
Mar. 5—Ordered motion to consolidate all Indictments denied.
Mar. 5—Ordered motion to consolidate Indictments 7c, 8c, 9c, 10c, and 11c granted.
Mar. 5—Ordered motion for severance as to M. V. granted.
Mar. 5—Ordered recess 12:30 P. M. to 1:30 P. M.
Mar. 5—F. L. & A. R.—Plea Not Guilty.

1942

Mar. 5—Ordered jury drawn. Ordered jury sworn. Jury sworn.

Mar. 5—Ordered Alternate Jurors drawn. Ordered Alternate Jurors sworn. Alternate Jurors sworn.

Mar. 5—Swearing 1 witness.

Mar. 5—Ordered adjourned to March 6, 1942, at 10:00 A. M.

Mar. 6—Trial continued before Hon. George A. Welsh, Judge as to F. L. and A. R.

Mar. 6—Swearing 1 witness.

Mar. 6—Ordered adjourned to March 9, 1942, at 10:00 A. M.

Mar. 9—Trial continued before Hon. George A. Welsh, Judge as to F. L. and A. R.

Mar. 9—Swearing 4 witnesses.

Mar. 9—Ordered recess 12:30 to 2:00 P. M.

Mar. 9—Ordered adjourned to March 10, 1942, at 10:00 A. M.

Mar. 10—Trial continued before Hon. George A. Welsh, Judge as to F. L. & A. R.

Mar. 10—Swearing 10 witnesses.

Mar. 10—Ordered recess 12:30 to 1:30 P. M.

Mar. 10—Ordered adjourned to March 11, 1942.

7a Mar. 11—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.

Mar. 11—Ordered motion for direction of verdict of acquittal as to both denied.

Mar. 11—Ordered adjourned to March 12, 1942, at 10:00 A. M.

Mar. 12—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.

Mar. 12—Ordered renewal of motion for direction of verdict of acquittal denied.

Mar. 12—Swearing 4 witnesses.

Mar. 12—Ordered motion for mistrial denied.

Mar. 12—Ordered recess 12:15 P. M. to 1:05 P. M.

Mar. 12—Ordered renewal of motion for direction for a verdict of Not Guilty denied.

Mar. 12—Ordered adjourned to March 16, 1942, at 10:00 A. M.

Mar. 13—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.

Mar. 13—Ordered counts 2, 3, and 4 dismissed as to F. L.

Mar. 13—Ordered counts 1, 2, 3, and 4 dismissed as to A. R. denied.

Mar. 16—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.

Mar. 16—Deputy Marshal Costella sworn to accompany jury to restaurant.

1942

Mar. 16—Ordered U. S. Marshal provide luncheon for jury.
Mar. 16—Verdict as to F. L.—Guilty on Count 1.
Mar. 16—Verdict as to A. R.—Not Guilty on Counts 1, 2, 3, and 4.
Mar. 16—Ordered bail continued as to F. L. to await sentence.
Mar. 16—Ordered recess 1:10 P. M., to 2:20 P. M.
Mar. 21—Brief filed as to F. L. & A. R. (See 7c for Brief.)
8a Mar. 27—F. L. Sentence—Nine months in Corr. Inst. on Count 1 of Indictment (Welsh).
Mar. 27—F. L. Ordered sentence to run concurrently with the sentence imposed this day under Indictment 7c (Welsh).
Mar. 27—F. L. Ordered that a certified copy of this signed judgment serve as the commitment of the defendant (Welsh).
Mar. 27—F. L.—Warrant of Commitment issued. Duplicate.
Mar. 30—F. L.—Notice and Grounds of Appeal filed (See 7c for Notice).
Apr. 30—F. L.—Consent and Order extending time to settle and and file Bill of Exceptions and file assignments of error filed (Fake) (See 7c).
June 15—F. L.—Assignments of Error (See 7c) filed
June 15—F. L.—Order to turn over testimony to Harold Simandl, Esq., atty. for deft. (See 7c) (Fake).
June 15—Bill of Exceptions filed (See 7c).
June 22—Order extending time for filing the Record on Appeal filed (Fake) (See 7c).

9a In United States District Court, District of New Jersey

Criminal 9c

Title 40 U. S. C., Sec. 276-b.

THE UNITED STATES

vs.

FRANK LAUDANI, ALFREDO ROSSI, MATTEO VIAGGIO, and GAETANO DE CESARE

Docket Entries

1940

Jan. 12—Indictment for Compelling return of compensation for public work &c.
Jan. 13—G. DeC. Bench Warrant issued.
Feb. 6—G. DeC. Bench Warrant ret'd (executed).

1940
Mar. 18—G. DeC.—Plea Not Guilty.
1941
Mar. 17—F. L. Hearing before Hon. Thomas Glynn Walker, U. S. Dist. Judge.
Mar. 17—F. L. Memo to be served Thursday.
Mar. 17—F. L. Decision reserved.
Mar. 18—F. L.—Plea Not Guilty.
Mar. 18—A. R.—Plea Not Guilty.
Mar. 18—M. V.—Plea Not Guilty.
Mar. 18—G. DeC.—Plea Not Guilty.
Dec. 12—F. L.—Memorandum denying motion to quash (W) (See 12c).
Dec. 17—F. L.—Order dismissing demurrer to quash filed (W) (See 12c).
16a 1942
Mar. 5—Trial Moved before George A. Welsh, Judge as to all.
Mar. 5—Ordered motion to withdraw plea of Not Guilty as to all defendants granted.
Mar. 5—Order to quash each of indictments 7c, 8c, 9c, 10c and 11c and each Count of each Indictment on behalf of all defendants denied.
Mar. 5—Order motion to consolidate all Indictments denied.
Mar. 5—Order motion to consolidate Indictments 7c, 8c, 9c, 10c and 11c granted.
Mar. 5—Order motion for severance as to M. V. and G. DeC. granted.
Mar. 5—Order recess 12:30 P. M. to 1:30 P. M.
Mar. 5—F. L. and A. R.—Plea Not Guilty.
Mar. 5—Ordered jury drawn. Ord. jury sworn. Jury sworn.
Mar. 5—Ordered alternate jurors drawn. Ordered alternate jurors sworn. Alternate Jurors sworn.
Mar. 5—Swearing 1 witness.
Mar. 5—Ordered adjourned to March 6, 1942, at 10:00 A. M.
Mar. 6—Trial continued before Hon. George A. Welsh, Judge as to F. L. and A. R.
Mar. 6—Swearing 1 witness.
Mar. 6—Ordered adjourned to March 9, 1942 at 10:00 A. M.
Mar. 9—Trial continued before Hon. George A. Welsh, Judge as to F. L. and A. R.
Mar. 9—Swearing 4 witnesses.
Mar. 9—Ordered recess 12:30 to 2:00 P. M.
Mar. 9—Ordered adjourned to March 10, 1942 at 10:00 A. M.

1942

11a Mar. 10—Trial continued before Hon. George A. Welsh, Judge, as to F. L. and A. R.

Mar. 10—Swearing 10 witnesses.

Mar. 10—Ordered recess 12:30 to 1:30 P. M.

Mar. 10—Ordered Adjourned to March 11, 1942.

Mar. 11—Trial continued before Hon. George A. Welsh, Judge as to F. L. and A. R.

Mar. 11—Ord. motion for direction of verdict of acquittal as to both denied.

Mar. 11—Ord. adjourned to March 12, 1942, at 10:00 A. M.

Mar. 12—Trial continued before Hon. George A. Welsh, Judge as to F. L. and A. R.

Mar. 12—Ordered motion for a renewal for direction of verdict of acquittal denied.

Mar. 12—Swearing 4 witnesses.

Mar. 12—Ordered motion for mistrial denied.

Mar. 12—Ordered recess 12:15 P. M. to 1:05 P. M.

Mar. 12—Ordered renewal of motion for direction for a verdict of Not Guilty denied.

Mar. 12—Ordered adjourned to March 16, 1942, at 10:00 A. M.

Mar. 13—Trial continued before Hon. George A. Welsh, Judge as to F. L. and A. R.

Mar. 13—Ordered Counts 1, 2, 3, 4, 5, and 6 dismissed as to F. L.

Mar. 13—Ordered Counts 1, 2, 3, 4, 5, and 6 dismissed as to A. R.

Mar. 16—Trial continued before Hon. George A. Welsh, Judge, as to F. L. and A. R.

Mar. 16—Deputy Marshal Costella sworn to accompany jury to a restaurant.

Mar. 16—Ordered U. S. Marshal provide luncheon for jury.

Mar. 16—Ordered recess 1:10 P. M. to 2:20 P. M.

Mar. 16—F. L.—Verdict—Guilty on Counts 7, 8, 9, and 10.

12a Mar. 16—A. R. Verdict—Not Guilty on Counts 7, 8, 9, and 10.

Mar. 16—Ordered bail continued as to F. L. to await sentence.

Mar. 21—Brief filed as to F. L. and A. R. (See 7c for Brief).

Mar. 27—F. L. Sentence—Nine months in Corr. Inst. on each of Counts 7, 8, 9, and 10 of Indictment, sentence to run concurrently (Welsh).

Mar. 27—F. L. Ordered sentence to run concurrently with the sentence, imposed this day under Indictment 7c (Welsh).

Mar. 27—F. L. Ordered that a certified copy of this signed judgment serve as the commitment of the defendant (Welsh).

Mar. 27—F. L. Warrant of Commitment issued. Duplicate.

1942
Mar. 30—F. L. Notice and Grounds of Appeal filed (See 7c for Notice).
Apr. 30—F. L.—Consent and Order extending time to settle and file Bill of Exceptions and file Assignments of Error filed (Fake) (See 7c).
June 15—Assignments of Error (See 7c) filed.
June 15—F. L.—Order to turn over testimony to Harold Simandl, Esq., atty. for deft. (Fake) (See 7c).
June 15—F. L.—Bill of Exceptions filed (See 7c).
June 22—F. L.—Order extending time for filing the Record on Appeal filed (Fake) (See 7c).

13a In United States District Court, District of New Jersey

Criminal 10c

Title 40 U. S. C., Sec. 276-b

THE UNITED STATES

vs.

FRANK LAUDANI, ALFREDO ROSSI, GAETANO DE CESARE, and ROCCO PEPEVILLANO

Docket Entries

1940
Jan. 12—Indictment for Compelling return of compensation for public works &c.
Jan. 13—R. P. Bench Warrant issued.
Feb. 6—R. P. Bench Warrant ret'd (executed).
Mar. 18—F. L. Plea—Not Guilty. Ordered bail continued.
Mar. 18—A. R. Plea—Not Guilty. Ordered bail continued.
Mar. 18—G. DeC. Plea—Not Guilty. Ordered bail continued.
Mar. 18—R. P. Plea—Not Guilty. Ordered bail continued.
1941
Mar. 17—F. L. Hearing before Hon. Thomas Glynn Walker, U. S. Dist. Judge.
Mar. 17—F. L. Memo to be served Thursday.
Mar. 17—F. L. Decision reserved.
Dec. 12—F. L.—Memorandum denying motion to quash (W) (See 12c).
Dec. 17—F. L.—Order dismissing demurrer and motion to quash filed (W) (See 12c).

1942

14a Mar. 5—Trial moved before Hon. George A. Welsh, Judge as to all.
Mar. 5—Ordered motion to withdraw pleas of Not Guilty as to all granted.
Mar. 5—Ordered motion to quash each Indictment and each count of each Indictment on behalf of all defendants denied.
Mar. 5—Ordered motion to consolidate all Indictments denied.
Mar. 5—Ordered motion to consolidate Indictments 7c, 8c, 9c, 10c and 11c. Ordered granted.
Mar. 5—Ordered motion for severance as to G. DeC. & R. P. granted.
Mar. 5—Ord. Recess 12:30 P. M. to 1:30 P. M.
Mar. 5—F. L. & A. R.—Plea Not Guilty.
Mar. 5—Ordered jury drawn. Ordered Jury sworn. Jury sworn.
Mar. 5—Ordered Alternate Jurors drawn. Ordered Alternate Jurors sworn. Alternate Jurors sworn.
Mar. 5—Swearing 1 witness.
Mar. 5—Ordered adjourned to March 6, 1942, at 10:00 A. M.
Mar. 6—Trial continued before Hon. George A. Welsh, Judge as to F. L. & A. R.
Mar. 6—Swearing 1 witness.
Mar. 6—Ordered adjourned to March 9, 1942, at 10:00 A. M.
Mar. 9—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.
Mar. 9—Swearing 4 witnesses.
Mar. 9—Ordered recess 12:30 to 2:00 P. M.
Mar. 9—Ordered adjourned to March 10, 1942, at 10:00 A. M.
15a Mar. 10—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.
Mar. 10—Swearing 10 witnesses.
Mar. 10—Ordered recess 12:30 to 1:30 P. M.
Mar. 10—Ordered adjourned to March 11, 1942.
Mar. 11—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.
Mar. 11—Ordered motion for direction of verdict of acquittal as to both denied.
Mar. 11—Ordered adjourned to March 12, 1942, at 10:00 A. M.
Mar. 12—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.
Mar. 12—Ordered renewal for direction of verdict of acquittal denied.
Mar. 12—Swearing 4 witnesses.

1942
Mar. 12—Ordered motion for mistrial denied.
Mar. 12—Ordered recess 12:15 P. M. to 1:05 P. M.
Mar. 12—Ordered renewal of motion for direction of verdict of Not Guilty denied.
Mar. 12—Ordered adjourned to March 16, 1942, at 10:00 A. M.
Mar. 13—Trial continued before Hon. George A. Welsh, Judge, as to F. L. & A. R.
Mar. 13—Ordered counts 1, 2, and 3 dismissed as to F. M.
Mar. 13—Ordered counts 1, 2, and 3—dismissal as to A. R. denied.
Mar. 16—Trial continued before Hon. George A. Welsh, Judge, as to A. R.
Mar. 16—Deputy Marshal Costella sworn to accompany jury to a restaurant.
16a Mar. 16—Ordered U. S. Marshal provide luncheon for jury.
Mar. 16—Ordered recess 1:10 to 2:20 P. M.
Mar. 16—A. R. Verdict—Not Guilty as to Counts 1, 2, and 3.
Mar. 21—Brief filed as to F. L. & A. R. (See 7c for Brief).
Mar. 30—F. L.—Notice and Grounds of Appeal filed (See 7c for Notice).
Apr. 30—F. L.—Consent and order extending time to settle and file Bill of Exceptions and file Assignments of Error filed (Fake) (See 7c).
June 15—F. L.—Assignments of Error (See 7c) filed.
June 15—F. L.—Order to turn over testimony to Harold Simandl, Esq., atty. for deft. (Fake) (See 7c).
June 15—Bill of Exceptions filed (See 7c).
June 22—Order extending time for Filing the Record on Appeal (Fake) (See 7c).

17a In United States District Court District of New Jersey

Criminal 11c

Title 40 U. S. C. Sec. 276–b

THE UNITED STATES

vs.

FRANK LAUDANI, ALFREDO ROSSI, ROCCO PUDEVILLANO, and ANTHONY MARTELLO

Docket Entries

1940
Jan. 12—Indictment for Compelling return of compensation for public work &c.

1940

Jan. 13—A. M. Bench Warrant issued.
Jan. 20—A. M. Bench Warrant returned (not executed).
Feb. 1—A. M. Ord. alias Bench Warrant issue (Firm). Alias Bench Warrant issued.
Feb. 6—A. M. Alias Bench Warrant returned (executed).
Mar. 18—F. L. Plea—Not Guilty. Ord. bail con.
Mar. 18—A. R. Plea—Not Guilty. Ord. bail con.
Mar. 18—R. P. Plea—Not Guilty. Ord. bail con.
Mar. 18—A. M. Plea—Not Guilty. Ord. bail con.

1941

Mar. 17—F. L. Hearing before Hon. Thomas Glynn Walker U. S. Dist. Judge.
Mar. 17—F. L. Memo. to be served Thursday.
Mar. 17—F. L. Decision reserved.
Dec. 12—F. L. Memorandum denying motion to quash (W) (See 12c).
Dec. 17—F. L. Order dismissing demurrer to quash filed (W) (See 12c).

1942

18a Mar. 5—Trial moved before Hon. George A. Welsh, Judge, as to all.
Mar. 5—Ord. motion to withdraw please of Not Guilty as to all granted.
Mar. 5—Ord. motion to quash each Indictment and each count of each indictment on behalf of all defendants denied.
Mar. 5—Ord. motion to consolidate all Indictments denied.
Mar. 5—Ord. motion to consolidate Indictments 7c, 8c, 9c, 10c, and 11c granted.
Mar. 5—Ord. motion for severance as to R. P. and A. M. granted.
Mar. 5—Ord. recess 12:30 P. M. to 1:30 P. M.
Mar. 5—F. L. and A. R.—Plea Not Guilty.
Mar. 5—Ord. Jury drawn. Ord. Jury sworn. Jury sworn.
Mar. 5—Ord. Alternate jurors drawn. Ord. Alternate jurors sworn. Alternate jurors sworn.
Mar. 5—Swearing 1 witness.
Mar. 5—Ord. adjourned to March 6, 1942 at 10:00 A. M.
Mar. 6—Trial con. before Hon. George A. Welsh, Judge as to F. L. and A. R.
Mar. 6—Swearing 1 witness.
Mar. 6—Ord. adjourned to March 9, 1942 at 10:00 A. M.
Mar. 9—Trial con. before Hon. George A. Welsh, Judge as to F. L. and A. R.
Mar. 9—Swearing 4 witnesses.

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Mar. 9—Ord. recess 12:30 to 2:00 P. M.
Mar. 9—Ord. adjourned to March 10, 1942 at 10:00 A. M.
Mar. 10—Trial con. before Hon. George A. Welsh, Judge as to F. L. and A. R.
Mar. 10—Swearing 10 witnesses.
19a Mar. 10—Ord. recess 12:30 to 1:30 P. M.
Mar. 10—Ord. adj. to March 11, 1942.
Mar. 11—Trial con. before Hon. George A. Welsh, Judge, as to F. L. and A. R.
Mar. 11—Ord. motion for direction of verdict of acquittal as to both denied.
Mar. 11—Ord. adj. to March 12, 1942 at 10:00 A. M.
Mar. 12—Trial con. before Hon. George A. Welsh, Judge, as to F. L. and A. R.
Mar. 12—Ord. renewal of motion for direction of verdict of acquittal denied.
Mar. 12—Swearing 4 witnesses.
Mar. 12—Ord. recess 12:15 P. M. to 1:05 P. M.
Mar. 12—Ord. motion for mistrial denied.
Mar. 12—Ord. renewal of motion for direction of verdict of Not Guilty denied.
Mar. 12—Ord. adj. to March 16, 1942 at 10:00 A. M.
Mar. 13—Trial con. before Hon. George A. Welsh, Judge, as to F. L. and A. R.
Mar. 13—Ord. counts 3, 4, and 5 dismissed as to F. L.
Mar. 13—Ord. counts 3, 4, and 5 dismissed as to A. R.
Mar. 16—Trial con. before Hon. George A. Welsh, Judge, as to F. L. and A. R.
Mar. 16—Deputy Marshal Costella sworn to accompany jury to restaurant.
Mar. 16—Ord. U. S. Marshal provide luncheon for jury.
Mar. 16—Ord. recess 1:10 P. M. to 2:20 P. M.
Mar. 16—F. L. Verdict—Guilty on Counts 1 and 2.
Mar. 16—A. R. Verdict—Not Guilty on Counts 1 and 2.
Mar. 16—Ord. bail con. as to F. L. to await sentence.
Mar. 24—Brief filed as to F. L. and A. R. (See 7c for Brief).
20a Mar. 27—F. L. Sentence—Nine months in Corr. Inst. on each of Counts 1 and 2 of Ind. to run concurrently (Welsh).
Mar. 27—F. L. Ord. that sentence run concurrently with the sentence imposed this day under Ind. 7c (Welsh).

1942

Mar. 27—F. L. Ord. that a cert. copy of this signed judgment serve as the commitment of the defendant (Welsh).

Mar. 27—F. L. Warrant of Commitment issued. Dup.

Mar. 30—F. L. Notice and Grounds of Appeal filed. (See 7c for Notice).

Apr. 30—F. L.—Consent and Order extending time to settle and file Bill of Exceptions and file Assignments of Error filed (Fake) (See 7c).

June 15—F. L.—Assignments of Error (See 7c) filed.

June 15—F. L.—Order to turn over testimony to Harold Sinnandl, Esq., Atty. for Deft. (Fake) (See 7c).

June 15—F. L.—Bill of Exceptions filed (See 7c).

June 22—F. L.—Order extending time for filing the Record on Appeal (Fake) (See 7c).

In United States District Court

Indictments

vs.

EXPLANATORY NOTE

Indictments 7C, 8C, 9C, 10C, and 11C, were by order of the Court consolidated for trial as against Frank Laudani and Alfredo Rossi. On motion of the Government, the Court ordered a severance, as to the other defendants named therein.

21a Each count of the several indictments is couched in identical language, except for differences in dates, amounts of money and names of persons alleged to have given up such money. We print only Count 1 of Indictment 7C in full. Those portions of the count where differences occur in the other counts of the respective indictments are printed in bold face type. With respect to the other indictments and the several counts thereof (in the interests of brevity) we merely print the portion which is different.

Indictment 7C

UNITED STATES OF AMERICA, ss:

District of New Jersey,

In the District Court of the United States of America in and for the District of New Jersey, at the November Term thereof, in the year 1939.

The Grand Jurors of the United States of America duly impaneled, sworn and charged to inquire in and for the body of the said District of New Jersey, upon their oaths present,

Count 1

(1) That during the period between the 1st day of January in the year 1937 and the 15th day of May in the year 1938, there was under construction and in the course of completion at Weehawken in the State of New Jersey certain public works known as the Weehawken Plaza connection of the Lincoln Tunnel under the Hudson River from New York to New Jersey under a certain contract between the Port of New York Authority and George M. Brewster & Son., Inc., a body corporate, the general contractor, and under a subcontract made between the said George M.
22a Brewster & Son, Inc., and the Cape Ann Granite Company for the furnishing and setting of granite rubble facing and coping necessary in the construction of the said Weehawken Plaza connection, all of the said public work being financed in part by grants from the United States of America, and one Frank Laudani was then and there foreman for the said Cape Ann Granite Company with power and authority to employ and discharge stone masons and stone setters in the said setting and preparing of the said granite rubble facing and coping, and well knew that the hourly rate of pay as fixed and posted on the said work for stone cutters and stone masons was during the period from January 1, 1937, until May 31, 1937, inclusive, at the rate of $1.50 per hour, and from June 1, 1937, until April 1, 1938, inclusive, was at the rate of $1.88½ per hour, and that all stone masons employed on said work were entitled to have and receive the full posted rate of pay without deductions for any purpose whatever;

(2) And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that on or about the 3rd day of May in the year 1937, at Weehawken, in the County of Hudson and State and District of New Jersey and within the jurisdiction of this Court, the said Frank Laudani and one Alfredo Rossi willfully, unlawfully, and feloniously and by intimidation, threats of dismissal and by giving to understand that all persons employed on such work would be required to give to and for the said Frank Laudani and Alfredo Rossi, parts of their true wages so long as they were so employed, did induce one Giovanni Roberti to give up to the said Frank Laudani and Alfredo Rossi the sum of five
23a dollars and fifty cents, a part of the compensation of thirty-three dollars to which the said Giovanni Roberti was entitled as a stone mason for work and labor performed on such public work for the week ending April 28, 1937;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count 2

Date of offence	Employee	Amount given up	Wage earned	Week ending
June 7, 1937	Sante Spatola	$8.20	$42.00	June 2, 1937

Count 3

July 19, 1937	Sante Spatola	$10.33	$55.63	July 14, 1937

Count 4

Aug. 9, 1937	Sante Spatola	$12.25	$66.00	Aug. 4, 1937

Count 5

Sept. 6, 1937	Sante Spatola	$11.38	$61.29	Sept. 1, 1937

Count 6

Oct. 11, 1937	Giovanni Roberti	$11.90	$64.11	Oct. 6, 1937

Count 7

Nov. 1, 1937	Giovanni Roberti	$12.25	$66.00	Oct. 27, 1937

Indictment 8C

Defendants Frank Laudani, Alfredo Rossi, Matteo Viggio

Count 1

Date of offence	Employee	Amount given up	Wage earned	Week ending
Sept. 8, 1937	Giuseppi Campo	$8.40	$52.80	Sept. 8, 1937

24a

Count 2

Oct. 11, 1937	Giuseppi Campo	$10.20	$64.11	Oct. 6, 1937

Count 3

Nov. 22, 1937	Giuseppi Campo	$6.30	$39.60	Nov. 17, 1937

Count 4

Dec. 6, 1937	Giuseppi Campo	$8.10	$50.91	Dec. 1, 1937

Indictment 9C

Defendants Frank Laudani, Alfredo Rossi, Matteo Viaggio, Gaetano DeCesare

Count 1

Date of offense	Employee	Amount given up	Wage earned	Week ending
Sept. 13, 1937	Onofrio Lamastra	$9.80	$52.80	Sept. 8, 1937

Count 2

Oct. 11, 1937	Onofrio Lamastra	$11.90	$64.11	Oct. 6, 1937

Count 3

Nov. 2, 1937	Onofrio Lamastra	$12.25	$66.00	Oct. 27, 1937

Count 4

Dec. 20, 1937	Onofrio Lamastra	$8.23	$44.31	Dec. 15, 1937

25x

Count 5

Nov. 29, 1937	Onofrio Lamastra	$9.80	$52.80	Nov. 24, 1937

Count 6

Feb. 20, 1938	Onofrio Lamastra	$5.25	$28.29	Feb. 15, 1938

Count 7

June 28, 1937	Alfio Tomasello	$8.79	$47.14	June 23, 1937

Count 8

Aug. 9, 1937	Alfio Tomasello	$12.25	$66.00	Aug. 4, 1937

Count 9

Oct. 11, 1937	Alfio Tomasello	$11.90	$64.11	Oct. 6, 1937

Count 10

Nov. 8, 1937	Alfio Tomasello	$9.80	$52.80	Nov. 3, 1937

Indictment 10C

Defendants Frank Laudani, Alfredo Rossi, Gaetano D'Cesare, Rocco Pedevillano

Count 1

Date of offence	Employee	Amount given up	Wage earned	Week ending
Oct. 18, 1937	Anthony Lasorsa	$4.90	$26.40	Oct. 13, 1937

Count 2

Nov. 2, 1937	Anthony Lasorsa	$12.25	$66.00	Oct. 27, 1937

Count 3

Nov. 8, 1937	Anthony Lasorsa	$9.80	$52.80	Nov. 3, 1937

26a

Indictment 11C

Defendants Frank Laudani, Alfredo Rossi, Rocco Pedevillano, Anthony Martello

Count 1

Date of offence	Employee	Amount given up	Wage earned	Week ending
Aug. 23, 1937	Joseph Faillace	$10.50	$66.00	Aug. 18, 1937

Count 2

Sept. 20, 1937	Joseph Faillace	$8.55	$53.74	Sept. 15, 1937

Count 3

Oct. 11, 1937	Joseph Faillace	$10.20	$64.11	Oct. 6, 1937

Count 4

Nov. 8, 1937	Joseph Faillace	$8.40	$52.80	Nov. 3, 1937

Count 5

Dec. 13, 1937	Joseph Faillace	$5.70	$35.83	Dec. 8, 1937

Explanatory Note

The following demurrer and motion to quash was by agreement considered as applicable to all of the indictments. (See Judge Walker's memorandum, page 37a.)

A motion to quash addressed to the indictments which were tried (made upon the grounds hereinafter set forth) was also denied by trial Judge Welsh. (See page 47a.)

27a

In United States District Court

Demurrer to Indictment for Violation, Title 40 U. S. C., Section 276–b

And now, come the defendants, Frank Laudani and Matteo Viaggio, by their attorney, Harold Simandl, respectively, and having heard the said indictment read, say, that the said indictment and the several counts thereof, and the matters and things therein set forth, as therein set forth, are not sufficient in law to compel an answer thereto, and the defendants therefore demur to the said indictment on the following grounds, and for the following reasons:

(1) The allegations contained in said indictment and the several counts thereof, do not constitute any public offense under the laws of the United States.

(2) The said indictment and the several counts thereof, do not state facts sufficient to charge an offense against the United States, with sufficient certainty to advise the defendants of the nature of the charge sought to be proved thereunder, in order to enable them to prepare their defense thereto, nor to plead the judgment of the Court in this case, in bar of a further prosecution of the same.

(3) The said indictment and the several counts thereof, fail to allege that the defendants induced any person employed in the construction, prosecution and completion of any public building, financed in whole or in part by loans or grants from the United States, or in the repair thereof, to give up any part of the compensation to which he was entitled under his contract of employment, as required and provided by the Act of June 13, 1934.

(4) The said indictment and the first, second, and third counts thereof fail to allege that the defendants were the employers of Felice Giovene, mentioned in said indictment, as required and provided by the Act of June 13, 1934.

28a (5) The said indictment and the fourth and fifth counts thereof, fail to allege that the defendants were the employers of Santo DiCosta, mentioned in said indictment, as required and provided by the Act of June 13, 1934.

(6) The indictment and the first, second, and third counts thereof, fail to allege that at the time of the commission of the alleged offense, a contract of employment existed between the defendants and Felice Giovene, mentioned in said indictment, as required and provided by the Act of June 13, 1934.

(7) The indictment and the fourth and fifth counts thereof fail to allege that at the time of the commission of the alleged offense, a contract of employment existed between the defendants and Santo DiCosta, mentioned in said indictment, as required and provided by the Act of June 13, 1934.

(8) The said indictment and the first, second, and third counts thereof, fail to allege that Felice Giovene, therein mentioned, was induced by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, to give up to his employer, any part of the compensation to which he was entitled under a contract then existing between himself and his said employer.

(9) The said indictment and the fourth and fifth counts thereof, fail to allege that Santo DiCosta, therein mentioned, was induced by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, to give up to his employer, any part of the compensation to which he was entitled under a contract then existing between himself and his said employer.

29a (10) The indictment and the first, second, and third counts thereof, fail to allege that the defendants, in inducing Felice Giovene to give up the moneys mentioned in said indictment, were acting as the agents or in behalf of the employer of said Felice Giovene therein named.

(11) The indictment and the fourth and fifth counts thereof, fail to allege that the defendants, in inducing Santo DiCosta to give up the moneys mentioned in said indictment, were acting as the agents or in behalf of the employer of said Santo DiCosta therein named.

(12) The indictment and the first, second, and third counts thereof, fail to allege that the sums of money which Felice Giovene was induced to give up to the defendants, was part of any compensation received by him under an existing contract of employment; entered into by said Felice Giovene with his said employer.

(13) The indictment and the fourth and fifth counts thereof, fail to allege that the sum of money which Santo DiCosta was induced to give up to the defendants, was part of any compensation received by him under an existing contract of employment, entered into by said Santo DiCosta with his said employer.

(14) The indictment and the first, second, and third counts thereof, fail to allege that Felice Giovene was induced by his employer to return to his said employer, compensation which he, said Felice Giovene, had received under an existing contract of employment, entered into between said Felice Giovene, and his said employer.

(15) The indictment and the fourth and fifth counts thereof, fail to allege that Santo DiCosta was induced by his employer to return to his said employer, compensation, which he, said
30a Santo DiCosta, had received under an existing contract of employment, entered into between said Santo DiCosta, and his said employer.

(16) The indictment and the first, second, and third counts thereof, fail to allege that a contract of employment existed between the defendants as employer, and Felice Giovene, as employee.

(17) The indictment, and the fourth and fifth counts thereof, fail to allege that a contract of employment existed between the defendants as employer, and Santo DiCosta, as employee.

(18) The indictment, and the first, second and third counts thereof, fail to allege that the sums of money which Felice Giovene was induced to give up to the defendants, was paid back or returned to the employer of said Felice Giovene.

(19) The indictment, and the fourth and fifth counts thereof, fail to allege that the sums of money which Santo DiCosta was induced to give up to the defendants, was paid back or returned to the employer of said Santo DiCosta.

(20) The said indictment and the first, second, and third counts thereof, fail to allege that the defendants, as employers, entered into a contract of employment with Felice Giovene, employing him in the construction, prosecution and completion of any public building, financed in whole or in part by loans or grants from the United States, or in the repair thereof, as required and provided by the Act of June 13, 1934.

(21) The said indictment and the fourth and fifth counts thereof, fail to allege that the defendants, as employers, entered
31a into a contract of employment with Santo DiCosta, employing him in the construction, prosecution and completion of any public building, financed in whole or in part by loans or grants from the United States, or in the repair thereof, as required and provided by the Act of June 13, 1934.

(22) The said indictment and the several counts thereof, fail to allege that the defendants, as employers, induced any person employed by them in the construction, prosecution and completion

of any public building financed in whole or in part by loans or grants from the United States, or in the repair thereof, to give up any part of the compensation to which any such person was entitled, under a contract of employment entered into between the defendants as employers, and said employee, as required and provided by the Act of June 13, 1934.

(23) The statute upon which the indictment is based is unconstitutional and violative of the tenth amendment, in that it assumes to legislate with respect to purely local matters reserved to the several States.

(24) The indictment fails to charge a violation of the laws of the United States, in that the statute upon which such indictment is grounded, violates the provisions of the tenth amendment of the Constitution of the United States.

Wherefore, for want of a sufficient indictment, the said Frank Laudani and Matteo Viaggio, pray judgment, and that they be discharged and dismissed by the Court from the said premises in the said indictment specified.

HAROLD SIMANDL,
Attorney for Defendants.

32a In United States District Court

Motion to Quash Indictment

And now, come the defendants, Frank Laudani and Matteo Viaggio, by their attorney, Harold Simandl, respectively, and say that the indictment herein is not sufficient in law to require them, the defendants, to answer thereto, and the defendants move the Court to quash the indictment for the following reasons:

(1) The allegations contained in said indictment, and the several counts thereof, do not constitute any public offense under the laws of the United States.

(2) The said indictment and the several counts thereof, do not state facts sufficient to charge an offense against the United States, with sufficient certainty to advise the defendants of the nature of the charge sought to be proved thereunder, in order to enable them to prepare their defense thereto, nor to plead the judgment of the Court in this case, in bar of a further prosecution of the same.

(3) The said indictment and the several counts thereof, fail to allege that the defendants induced any person employed in the construction, prosecution and completion of any public building, financed in whole or in part by loans or grants from the United States, or in the repair thereof, to give up any part of the compensation to which he was entitled under his contract of employment, as required and provided by the Act of June 13, 1934.

(4) The said indictment and the first, second and third counts thereof, fail to allege that the defendants were the employers of Felice Giovene, mentioned in said indictment, as required and provided by the Act of June 13, 1934.

(5) The said indictment and the fourth and fifth counts thereof, fail to allege that the defendants were the employers of Santo DiCosta, mentioned in said indictment, as required and provided by the Act of June 13, 1934.

33a (6) The indictment and the first, second, and third counts thereof, fail to allege that at the time of the commission of the alleged offense, a contract of employment existed between the defendants and Felice Giovene, mentioned in said indictment, as required and provided by the Act of June 13, 1934.

(7) The indictment and the fourth and fifth counts thereof, fail to allege that at the time of the commission of the alleged offense, a contract of employment existed between the defendants and Santo DiCosta, mentioned in said indictment, as required and provided by the Acts of June 13, 1934.

(8) The said indictment and the first, second, and third counts thereof, fail to allege that Felice Giovene, therein mentioned, was induced by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, to give up to his employer, any part of the compensation to which he was entitled under a contract then existing between himself and his said employer.

(9) The said indictment and the fourth and fifth counts thereof, fail to allege that Santo DiCosta, therein mentioned, was induced by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, to give up to his employer, any part of the compensation to which he was entitled under a contract then existing between himself and his said employer.

(10) The said indictment and the first, second, and third counts thereof, fail to allege that the defendants, in inducing Felice Giovene to give up the moneys mentioned in said indictment, were acting as the agents or in behalf of the employer of said Felice Giovene therein named.

(11) The indictment and the fourth and fifth counts thereof, fail to allege that the defendants, in inducing Santo
34a DiCosta to give up the moneys mentioned in said indictment, were acting as the agents or in behalf of the employer of said Santo DiCosta therein named.

(12) The indictment and the first, second, and third counts thereof, fail to allege that the sums of money which Felice Giovene was induced to give up to the defendants, was part of any com-

pensation received by him under an existing contract of employment, entered into by said Felice Giovene with his said employer.

(13) The indictment and the fourth and fifth counts thereof, fail to allege that the sums of money which Santo DiCosta was induced to give up to the defendants, was part of any compensation received by him under an existing contract of employment, entered into by said Santo DiCosta with his said employer.

(14) The indictment and the first, second, and third counts thereof, fail to allege that Felice Giovene was induced by his employer to return to his said employer, compensation which he, said Felice Giovene, had received under an existing contract of employment, entered into between said Felice Giovene, and his said employer.

(15) The indictment and the fourth and fifth counts thereof, fail to allege that Santo DiCosta was induced by his employer to return to his employer, compensation which he, said Santo DiCosa, had received under an existing contract of employment, entered into between said Santo DiCosta, and his said employer.

(16) The indictment and the first, second, and third counts thereof, fail to allege that a contract of employment existed between the defendants as employer, and Felice Giovene, as employee.

(17) The indictment, and the fourth and fifth counts thereof, fail to allege that a contract of employment existed
35a between the defendants as employer, and Santo DiCosta, as employee.

(18) The indictment, and the first, second, and third counts thereof, fail to allege that the sums of money which Felice Giovene was induced to give up to the defendants, was paid back or returned to the employer of said Felice Giovene.

(19) The indictment, and the fourth and fifth counts thereof, fail to allege that the sums of money which Santo DiCosta was induced to give up to the defendants, was paid back or returned to the employer of said Santo DiCosta.

(20) The said indictment and the first, second, and third counts thereof, fail to allege that the defendants, as employers, entered into a contract of employment with Felice Giovene, employing him in the construction, prosecution and completion of any public building, financed in whole or in part by loans or grants from the United States, or in the repair thereof, as required and provided by the Act of June 13, 1934.

(21) The said indictment and the fourth and fifth counts thereof, fail to allege that the defendants, as employers, entered into a contract of employment with Santo DiCosta, employing him in the construction, prosecution and completion of any public

building, financed in whole or in part by loans or grants from the United States, or in the repair thereof, as required and provided by the Act of June 13, 1934.

(22) The said indictment and the several counts thereof, fail to allege that the defendants, as employers, induced any person employed by them in the construction, prosecution and completion of any public building financed in whole or in part by
36a loans or grants from the United States, or in the repair thereof, to give up any part of the compensation to which any person was entitled, under a contract of employment entered into between the defendants as employers, and said employee, as required and provided by the Act of June 13, 1934.

(23) The statute upon which the indictment is based, is unconstitutional and violative of the tenth amendment, in that it assumes to legislate with respect to purely local matters reserved to the several States.

(24) The indictment fails to charge a violation of the laws of the United States, in that the statute upon which such indictment is grounded, violates the provisions of the tenth amendment of the Constitution of the United States.

Wherefore, for want of sufficient indictment, the said Frank Laudani and Matteo Viaggio, pray judgment and that they be discharged and dismissed by the Court from the said premises in the said indictment specified.

HAROLD SIMANDL,
Attorney for Defendants.

37a In United States District Court, District of New Jersey

Memorandum 12-c

UNITED STATES OF AMERICA

vs.

FRANK LAUDANI, MATTEO VIAGGIO, *Defendants*

Appearances: Charles M. Phillips, Esq., United States Attorney, by: Charles A. Stanziale, Esq., Assistant United States Attorney, for the Government. Harold Simandl, Esq., for the Defendant.

Memorandum

WALKER, District Judge:

The Grand Jury for the November Term, 1939, returned a series of indictments, charging certain persons with alleged violations of Section 276-b of Title 40 U. S. C. Except for

differences in names, dates and sums of money, the respective counts are couched in identical language. Under an order of this Court, the defendants were permitted to withdraw their pleas, in order to file a demurrer and motion to quash the indictment. Under the circumstances, a ruling on one of such indictments should be dispositive as to all.

38a The indictments attempt to lay an offense under the Act of June 13, 1934, c. 482, Sec. 1, 48 Stat. 948.[1]

Each of the several counts allege that "* * * between January 1, 1937 and May 15, 1938, there was under construction * * * at Weehawken, New Jersey, * * * certain public works known as the Weehawken Plaza * * * under a certain contract between the Port of New York Authority and George M. Brewster & Son, Inc., * * * general contractor, and under a sub-contract between George M. Brewster & Son, Inc., and the Cape Ann Granite Company, for the furnishing and setting of granite rubble facing and coping necessary in the construction of the said Weehawken Plaza connection, all of said public work being financed in part by grants from the United States of America, and one, Frank Laudani was then and there foreman for the said Cape Ann Granite Company, with power and authority to employ and discharge stone masons and stone setters in the said setting and preparing of the said granite rubble facing and coping, and well knew that the "hourly rate of pay as fixed and posted on the said work for stone setters and stone masons, was, during the period from January 1, 1937 until May 31, 1937, inclusive, at the rate of $1.50 per hour, and from June 1, 1937 until April 1, 1938, inclusive, was at the rate of 188 4/7 per hour, and that 'all stone masons employed on said work were entitled to have and receive the full posted rate of pay without deductions for any purpose whatever"; and the Grand Jurors * * * do further present that on or about the 29th day of Sep-

39a tember 1937 * * * the said Frank Laudani, and one Matteo Viaggio "wilfully, unlawfully, and feloniously and by intimidation, threats of dismissal and by giving to understand that all persons employed on such work would be required to give to and for the said Frank Laudani and Matteo Viaggio, parts of their true wages so long as they were so employed, did induce one Felice Giovene to give up to the said Frank Laudani and Matteo Viaggio the sum of Seven Dollars, a part of the compensation of

[1] The Act reads as follows:

"* * * whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from *from* the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

Fifty-two Dollars and eighty cents, to which the said Felice Giovene was entitled as a stone mason for work and labor performed on such public work for the week ending September 29, 1937."

The defendants demur to the indictment upon many grounds. All but two of said grounds can be dismissed without specific reference. The two which must be discussed can be summarized in the words: "The indictment is defective because it does not allege that the $52.80, was compensation to which Felice Giovene was entitled under his contract of employment with the Cape Ann Granite Company, and the defendants, Frank Laudani and Matteo Viaggio are not identified in the indictment as employers."

"The rigor of old common law rules of criminal pleading has yielded, in modern practice, to the general principle that formal defects, not prejudicial, will be disregarded. The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken
40a against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction."[2]

"No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient; nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant. * * *"[3]

Section 556, supra, was enacted to the end that while the accused must be afforded full protection, the guilty shall not escape through mere imperfection of pleading. The sufficiency of the pleadin[illegible] is to be determined by practical, rather than technical considerations.[4]

In our opinion the essential verbiage of the indictment, as hereinabove set forth, alleges that the $52.80, was compensation to which Felice Giovene was entitled under his contract of employment. The argument that it was not, if such is the extent to which the defendants' argument goes, is based upon

[2] Hagner, et al. v. United States, 285 U. S. 427, 52 S. Ct. 417. See also: Louis Tajsek, et al. v. United States (3rd Cir.) 220 Fed. 445, Cert. denied, 238 U. S. 627, 35 S. Ct. 864; Miller v. United States (3rd Cir.) 50 Fed. 2nd 505, Cert. denied, 284 U. S. 651, 52 S. Ct. 31; Ernest R. Woolley v. United States (9th Cir.) 97 Fed. 2nd 278, Cert. denied, 305 U. S. 614, 59 S. Ct. 73; Paul M. Hewitt v. United States (8th Cir.), 110 Fed. 2nd 1, Cert. denied, 310 U. S. 641, 60 S. Ct. 1089; Hartwell v. United States (5th Cir.), 107 Fed. 2nd 359; Stumbo, et al. v. United States (6th Cir.), 90 Fed. 2nd 828, Cert. denied, 302 U. S. 755, 58 S. Ct. 282; United States v. Goldsmith (2nd Cir.), 108 Fed. 2nd 917, Cert. denied, 309 U. S. 678, 60 S. Ct. 715, Rehearing denied, 310 U. S. 657, 60 S. Ct. 1073.

[3] Title 18 U. S. C. A. 556.

[4] Beard, et al. v. United States, 82 Fed. 2nd 837, Cert. denied, 298 U. S. 655, 56 S. Ct. 675.

evidence aliunde the indictment of which we cannot take cognizance. This argument should be addressed to the proofs or lack thereof at an appropriate time during the course of the trial, if at all.

41a The indictment alleges in substance that Felice Giovene, an employee on a public work financed in part by grants from the United States was induced to give up part of the compensation to which he was entitled under his contract of employment by force, intimidation or threat of procuring dismissal from such employment

We recognize that the compensation referred to in the indictment has to arise from a contract of employment between Felice Giovene and his employer. We do not recognize that the defendants, Frank Laudani and Matteo Viaggio must be employers of Felice Giovene. It is true, reports 883 and 1750 of the Senate Committee on the Judiciary to the Second Session of the 73rd Congress state that Section 276-b[5] is aimed at the suppression of the so-called "kick-back racket" by which a contractor on a government project pay laborers wages at the rate the government requires him to pay them, but thereafter forces them to give back to him a part of the wages they have received.

If Congress intended to so limit the Section to employers and employees, it could have used the word "employer"; instead it used the word "whoever." The Section is broad enough to be construed as covering "kick-back" payments received by an employer or any other person in a position to exercise force, intimidation, threat of procuring dismissal from such employment upon any person employed in the construction, prosecution or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, when the money given up is part of the compensation to which the employee is entitled under his contract of employment with his employer.

Its usefulness should not be curtailed by the failure of
42a members of Congress to fully state its breadth in their reports. The essence of the offense is the giving up of money which the employee is entitled to under his contract of employment.[6]

In United States v. Golder, et al, supra, the employers conspired to violate the Act by employing and paying skilled workmen under common labor classifications under threats of dismissal, etc., and in United States vs. Charlick,[7] the defendants and certain men employed by them entered into a scheme to establish a fictitious

[5] Title 40 U. S. C. A. 276 (b).
[6] United States v. Golder, et al., 11 Fed. Supp. 870.
[7] 26 Fed. Supp. 203.

wage scale, so that the defendants could get and carry on the job and the men could have employment. Neither case is authority for the proposition that the receiver of the "kick-back" must be an employer.

The motion to quash is denied.

43a (*Testimony*)

In the United States District Court for the District of New Jersey

7–C

THE UNITED STATES OF AMERICA

vs

FRANK LAUDANI AND ALFREDO ROSSI

8–C

THE UNITED STATES OF AMERICA

vs

FRANK LAUDANI, ALFREDO ROSSI, and MATTEO VIAGGIO

9–C

THE UNITED STATES OF AMERICA

vs

FRANK LAUDANI, ALFREDO ROSSI, MATTEO VIAGGIO, and GAETANO DE CESARE

10–C

THE UNITED STATES OF AMERICA

vs

FRANK LAUDANI, ALFREDO ROSSI, GAETANO DE CESARE, and ROCCO PEDEVILLANO

11–C

THE UNITED STATES OF AMERICA

vs

FRANK LAUDANI, ALFREDO ROSSI, ROCCO PEDEVILLANO, and ANTHONY MARTELLO

44a NEWARK, N. J.,

Thursday, March 5, et seq., 1942.

Before: Hon. GEORGE A. WELSH, U. S. D. J., and a jury.

Appearances: CHARLES M. PHILLIPS, Esq., U. S. Attorney, by Charles A. Stanziale, Esq., Assist. U. S. Attorney, for the Gov-

ernment. Harold Simandl, Esq., attorney for defendants Frank Laudani and Alfredo Rossi.

Motion to Quash Indictment

Mr. STANZIALE. If your Honor please, before calling the case formally for the empaneling of a jury, it is my understanding that Mr. Simandl has one or two motions addressed to the matter before we proceed.

It is my thought, for the sake of brevity, that we dispose of the motions, and if your Honor decides in favor of the Government, then we will call the jury.

Mr. SIMANDL. If the Court please, I believe it was in April of last year that I appeared before Judge Walker and secured permission from him to withdraw the pleas of the various defendants named in the various indictments, to wit: 6–C to 14–C of the November Term 1939, in order that I might file motions to quash the indictments and demurrers as well.

After reading the indictments I saw that they were all couched in identical language save for the dates and the various labors mentioned in the indictments. Otherwise they were substantially the same, so that, Mr. Harrington selected Indictment 12–C, I believe it was, as a sample, as it were, and I filed a written demurrer and motion to quash and a supplemental demurrer and motion to quash that particular indictment——

45a The COURT 12–C?

Mr. SIMANDL. Yes, 12–C, with the understanding, of course, that the Court's decision would govern with respect to the remainder.

The matter was argued before Judge Walker, and a very few days before his retirement from the bench, he wrote an opinion in which he denied the motions.

I believe that a copy of that opinion is in the records of this Court.

I am not clear as to the status of the record, and therefore request at this time, that your Honor permit each of the defendants to withdraw their respective pleas to the indictment, so that a motion to quash all of the indictments and the respective counts thereof may appear of record and may be made by each of the defendants as to each of such indictments and the several counts thereof as they affect that particular defendant.

* * * * *

The COURT. But, Mr. Simandl, in view of the previous history of the case, in view of the fact that one bill of indictment, 12–C, was taken out as a specimen indictment, and the parties were to be governed by the action of the Court in its rulings in that par-

ticular indictment, I would feel obligated to follow Judge Walker's decision. I would certainly hesitate, coming here as I do, in view of the previous status of the record, and the agreement of the parties to consider that as a test case, to do anything else than follow Judge Walker's decision.

* * * * *

The COURT. Well, I will tell you what I will do. I have indicated that I feel obligated to follow Judge Walker's opinion, and he has said that this is a case that should go to trial.

46a Now, for the purpose of keeping your record straight, I am going to accept your motion to permit the pleas to be withdrawn in these cases, which you have indicated, so that you may take the same procedure here that you took with reference to 12-C; and then if the case goes to trial, if there are other elements that you think were not presented to Judge Walker that you desire to present here, and it would be indicated that Judge Walker's decision does not cover those elements, I will not feel bound by Judge Walker's decision on anything that apparently was not before him, and we will not construe his opinion as binding, except in so far as it goes, that far only.

Mr. SIMANDL. Well, in view of the fact that your Honor has permitted the withdrawal of the pleas, I move, on behalf of each defendant who is on trial, to quash each separate indictment and each separate count of such indictment that has been returned against and affects each defendant upon the same grounds which were stated in the written motion to quash and the amendment thereto filed, or supplement thereto, whichever it was entitled, by the defendants Laudani and Viaggio, and which were considered by this Court in that case.

I ask this Court to consider the present motion made on behalf of each defendant as if the same had been separately made in each instance, in behalf of each defendant, and ask the Court to consider the grounds, and rule upon such motion to quash as if I had in each instance, in behalf of each separate defendant, spread upon the record the contents of the written motion to quash, and supplement or amendment thereto, in the Viaggio case which I have hereinbefore referred to.

I desire to call the attention of the Court to the fact that in many of the grounds set forth in that written motion to which I 47a have referred and restated in behalf of each defendant, the names of the employees mentioned in each count of the indictments vary as do the amounts paid and the dates, that is, different and varied employees are named in certain instances, and are alleged to have received and paid back varied amounts at different times.

However, the substance of the grounds in each instance is the same.

In considering such motions to quash, I would therefore ask the Court to consider the substance of the grounds as applicable and wherever a different name, or amount, or time, is mentioned in the indictment or count thereof, that the appropriate name, amount and time mentioned in the indictment or count thereof, be considered by the Court as having been mentioned in my motion to quash that indictment or separate count thereof.

* * * * *

The COURT. The motion to quash is overruled and exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Government's Opening Statement

* * * * *

Mr. STANZIALE. If your Honor please, for the purpose of the record, I am now proceeding for a clarification as to the issues joined by reason of my motion this morning.

The Government is proceeding on indictment 7–C against Frank Laudani and Alfredo Rossi. The Government is proceeding on indictment 8–C against Frank Laudani and Alfredo Rossi. The Government is proceeding on indictment 9–C as against Frank Laudani and Alfredo Rossi. The Government is proceeding on indictment 10–C against Frank Laudani and Alfredo Rossi. Also, on indictment 11–C, against Frank Laudani and Alfredo Rossi.

48a

The COURT. 7–C, 8–C, 9–C, 10–C, and 11–C.

Mr. STANZIALE. Yes. Now, if your Honor please, so that the record may be clear, so that the Government's position may be clear, your Honor is allowing, as I understand it, the consolidation of these five suits as against those two defendants.

The COURT. But you have to ask for severance of those other persons on those bills of indictment.

Mr. STANZIALE. Before I move for a severance as to the other defendants named in the indictments, so that the record may be clear, the Government moves that the matter should proceed on the five that you are allowing consolidation, as against Laudani and Rossi, because the Government fails to see any difference in the matter of Gaetano De Cesare and Matteo Viaggio, because Viaggio appears in indictment 8–C. He again appears in indictment 9–C, and he is named in three other indictments other than the five that the Government has elected to go to trial on, and he should be placed in the same category as the other defen-

a

ants; and the same reason applies as to Gaetano De Cesare, as his name appears as being jointly indicted with Laudani and Rossi in indictments 9–C and 10–C.

My application is, in addition to the consolidation of the trial as against Laudani and Rossi in 7–C, 8–C, 9–C, 10–C and 11–C, that they should be joined. The defendant Viaggio should go on trial with the rest of the defendants in indictments 8–C and indictment 9–C; and that the defendant De Cesare should be tried together, because he appears with the rest of the defendants in the indictment 9–C and 10–C.

The COURT. Motion overruled.

MR. STANZIALE. As to those two defendants.

49a THE COURT. I am sorry I can't give you an exception.

Is there an additional motion, Mr. Stanziale?

MR. STANZIALE. I move, in conjunction with your Honor's ruling, that the case be severed as against the following: Matteo Viaggio, indictment No. 8–C; Matteo Viaggio, and Gaetano De Cesare, indictment No. 9–C; Gaetano De Cesare and Rocco Pedevillano, in indictment 10–C; and Rocco Pedevillano, and Anthony Martello, in indictment No. 11–C.

The COURT. Motion granted.

MR. SIMANDL. Now, if the Court please, for the record, may I reiterate my objection to the order of consolidation upon the grounds already stated, and upon the further ground that these are separable offenses committed on widely separated days, and in no wise connected by any circumstances or facts cogent enough to permit the order of severance, and on the ground that the severance will undoubtedly, as I said before, embarrass the defendants in their presentation of their defense.

The COURT. Motion overruled. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

MR. SIMANDL. Thank you, sir.

The COURT. That keeps your record straight.

MR. STANZIALE. I think the record is straight now, your Honor.

The COURT. I excused the jury until 1:30.

(A recess was taken until 1:30 P. M.)

50a AFTERNOON SESSION

MR. STANZIALE. At this time, before empaneling the jury, I believe Mr. Simandl has already entered a plea.

So that the record may be straight, the plea as to Laudani and Rossi, in indictments Nos. 7–C, 8–C, 9–C, 10–C, and 11–C is not guilty, is that correct?

MR. SIMANDL. Yes, your Honor.

Mr. STANZIALE. At this time I move that 14 jurors be empaneled.

The COURT. Motion granted.

Are the defendants in court?

Mr. SIMANDL. Yes, sir.

(Fourteen jurors were duly empaneled and sworn.)

(Mr. Stanziale made an opening statement to the jury on behalf of the Government, as follows:)

May it please your Honor, Judge Welsh, and ladies and gentlemen of the jury:

* * * * *

Now, ladies and gentlemen, I am going to prove to you, that as far as this particular job was concerned, the Lincoln Tunnel job, that their flourished a racket that dug into the pockets of the workmen who worked to put into a state of condition this tunnel which was financed in part by the Federal Government.

I am going to prove to you that Laudani, with his henchman and stooge, Alfredo Rossi, and a number of other persons preyed upon workmen who with the sweat of their brow were earning their weekly pay.

I am going to prove to you that before some of the men were given employment, and that after some of the men were employed, they were approached either by Laudani per-
51a sonally, or by his stooge, Alfredo Rossi, and the several stooges——

Mr. SIMANDL. If the Court please, I will have to, in the court room, indulge in what I think is the character of language that this Court expects me to indulge in, and I think the distinguished and learned District Attorney ought to do likewise.

Now, an opening, as I understand it, is a statement of facts, and I resent very much this rather dramatic recital of racket and stooges and all that sort of thing. He can quite properly, before he at least has presented a single word of proof, state for the record what the facts are, not what he prefers to call them.

The COURT. Is your objection to the word "stooge"?

Mr. SIMANDL. Not only is my objection to that, but to the entire proposition as it is presented here; because, as a matter of fact, I think we are entitled to a statement of facts. When the argument comes in the future, when and if it does, then he can use his names for another purpose. We are entitled to a statement of facts. We don't have to have any coloring here.

The COURT. But the word "stooge" is almost passing into general usage. By "stooge," you mean an understudy or agent or representative, Mr. Stanziale?

Mr. STANZIALE. Exactly, your Honor.

Mr. SIMANDL. I think he can use the word "associate," or "agent." They are more proper terms to use in the courtroom.

The COURT. All right, Mr. Stanziale.

Mr. STANZIALE. I am going to prove to you by competent legal proof that these racketeers—if there is an objection to the word "stooge"—week after week, time after time, went over to these workmen when they received their pay and demanded a certain part of their salary.

* * * * *

52a I am going to prove to you that they flourished on this particular job, one of the biggest rackets that has ever——

Mr. SIMANDL. I object to that, if the Court please, and I think that the Court ought to take a firm hand.

This case is going to be tried on these indictments involving the sums of money mentioned in these indictments and no others.

The tendency here, from the very, very first gun was to attempt to use this old-fashioned method, which I thought the District Attorney would forget about; and that is to try to make it appear that this is some gigantic scheme.

Now, that is not what we are trying here, if the Court please. We are trying a case which, at the most, on the face of the indictment, involves $275. That is what it amounts to; and I resent very much any implication before this jury that the District Attorney is attempting to present which makes it appear that this is a tremendous scheme. We are not charged with any scheme. These two men are charged with individual acts.

I protest it as loudly as I could. The District Attorney, if the Court please, is trying to place before this jury, by innuendo, a disproportionate sense of what the facts are; and I am very sincerely upset, because I don't think that is the method of trying a case. We should try them on the facts.

The COURT. Do you think the Government should be limited to the actual facts of this indictment?

Mr. SIMANDL. Yes, sir. That is the charge; and that is distinctly the charge, sir.

This is not a conspiracy indictment; nor is it an indictment that covers a multitude of other sins. It is bad enough to have them charge each in a separate count.

53a The COURT. We will allow the Government to do otherwise, if they should feel inclined to do so when that time comes; but in the meantime, I will ask Mr. Stanziale, just probably for the purpose of discussion, to keep within the specified counts of the indictments.

Mr. STANZIALE. I have other proof, your Honor.

The COURT: I am not saying that you will be limited when you come to present your evidence.

Mr. STANZIALE. I am going to show you that there was a traffic upon labor, upon men, by men who were in a position to exploit the sweat of people who were working——

Mr. SIMANDL. If the Court please, that is not statement of facts. I think the Court should tell Mr. Stanziale that he should state facts. This is not a summation.

The COURT. Mr. Simandl, the Government is now, through its credited representatives, saying what it expects and intends to try to prove in these five bills of indictment that are now confronting the defendants on trial.

Now, I don't know the Government's case. You don't probably know the Government's case in its entirety. Mr. Stanziale is now stating the Government's hope of proof. I can't stop him, because I might be doing a grievous wrong. There is considerable latitude allowed to counsel on either side in saying what they expect to prove.

Mr. STANZIALE. May I respectfully refer your Honor to Meyers vs. The United States, in this circuit, as to what an opening can and must be?

The COURT. Yes; I am aware of that. I can't muzzle the District Attorney improperly as long as the District Attorney keeps within reasonable bounds and he states his hopes of proving something that he honestly believes he can prove by evidence. I can't stop him.

If he should say he is going to prove something that would be clearly irrelevant and clearly improper for him to
54a prove, no matter what the evidence was, I would certainly stop him.

Mr. SIMANDL. Well, if the Court please, I am objecting to his characterization.

Mr. STANZIALE. May I be permitted to continue? Your Honor has already ruled, and Mr. Simandl persists in raising one argument after another.

Mr. SIMANDL. I merely moved to have the remarks stricken on the ground that they are not statements of fact. They are characterizations, purely; and I submit that they have no place in an opening. I ask that the jury be instructed to disregard such remarks.

* * * * * *

I believe, in my opening, that I have covered the situation quite thoroughly. I have covered the situation which is fully completed by the counts in the indictments.

* * * * * *

Mr. STANZIALE. If your Honor please, I offer in evidence at the present time under and duly certified to, under the provisions of the statute of the Federal code, the executive order creating the P. W. A.

(The paper referred to was received in evidence and marked "Exhibit G-1.")

Mr. STANZIALE. I offer as part of the exhibit, the executive order with the delegation of functions and powers of the Federal Emergency Administration of Public Works, under the duly certified to by the archivist of the United States, and bearing the seal of the United States.

(The paper referred to was received in evidence and marked "Exhibit G-2.")

55a Mr. STANZIALE. I offer in evidence the executive order delegating certain functions and powers to the Federal Emergency Administration of Public Works, signed by the President on December 26, 1934, containing the certification as to the statute.

(The paper referred to was received in evidence and marked "Exhibit G-3.")

Mr. STANZIALE. I offer in evidence, with the proper certification, if your Honor please, the executive order authorizing the Federal Emergency Administrator of Public Works to continue to perform the functions under Title II of the National Industrial Recovery Act, and to perform the functions under the National Emergency Relief Appropriations Act of 1935.

(The paper referred to is received in evidence and marked "Exhibit G-4.")

Mr. STANZIALE. I offer in evidence, under proper certification of the Public Works Administrator, Federal Works Agency, the certificate of the executive officer relating to the fact that the grant agreement is between the Port of New York Authority and the United States of America, P. W. A.; and designating the Lincoln Tunnel as Docket No. 228, with the supplemental agreement between the Port of New York Authority and the United States of America and which contains a certification that same are true and correct copies, and the originals of which are on file in the records of the United States.

Also, the supplemental second grant agreement between the Port of New York Authority and the United States of America, together with the conformed copy of the original which is on file with the records of the Office of the P. W. A.

56a Mr. SIMANDL. I have no objection; but we might take a few minutes out to study this formidable document which my friend has presented to me.

Now, I have in my hand now, Mr. Stenographer, the latest paper that the District Attorney described. My remarks were not with respect to that paper. They were with respect to the other papers he had previously exhibited.

Mr. STANZIALE. My point was this: There are in evidence four or five documents which I would like my colleague, Mr. Mulcahy, to read to the jury while Mr. Simandl is examining the other documents.

The COURT. Have you any objection, Mr. Simandl?

Mr. SIMANDL. No.

(Mr. Mulcahy read Exhibits G-1, G-2, G-3, and G-4 to the jury.)

Mr. SIMANDL. If the Court please, I desire to object to the introduction of what purports to be a certain grant agreement between the Port Authority and the United States of America, which the District Attorney has offered, and annexed thereto are two supplemental papers to that agreement, as your Honor will see when you read or look upon the exhibit; upon these grounds: if the Court please: 1. There is nothing in the contract which indicates that this particular grant agreement between the Port Authority had anything to do with the advance of funds to the Cape Ann Granite Company. In other words, this agreement speaks of and cancels two former agreements made in 1933 and in 1934.

Under those agreements there was money expended which may or may not have gone to the Cape Ann Granite Company. When the moneys, those appropriated to the Cape Ann Granite Company through the Port Authority, and down the line, the Port
57a Authority to the Brewster and then to the Cape Ann Granite Company, if those moneys are the moneys that are involed, if they were granted prior to the passage of the particular law under which these men are now being prosecuted, I don't think any statute may be given a retroactive effect. That would make a criminal law ex post facto. It can't be done. So that I am objecting on the ground that there is nothing in this contract in the slightest degree to show that the grant that resulted from this particular contract or those that are annexed to the one which I hold, actually was the grant through which Cape Ann Granite received its money, through the various processes I pointed out.

I want to object on the further ground that the defendants herein are not parties to this contract, nor is there anything contained therein which subjects them in any way to the jurisdiction of this contract or to any acts or contractural relationship. They are in no wise bound by these papers which were executed apparently out of their presence, without their knowledge, and certainly without consulting them or without their consent. For

those reasons, if the Court please, these papers are not admissible against them at all, and until they are established——

The Court. Have you anything to say, Mr. Stanziale?

Mr. Stanziale. Yes.

* * * * * *

The Court. I will admit the instrument temporarily and give the defendant an opportunity to interpose an objection if and when the Government makes use of the instrument or a portion thereof.

You can proceed in your case as if it were in evidence, and then we will meet any specific case, if it comes up.

They will be admitted in evidence but it may be subject to an objection when a specific instance arises, and I want
58a to reserve the right of the defendant to meet that issue when it does arrive.

Mr. Simandl. May I have an exception?

The Court. Yes.

(Which exception is hereby allowed and sealed accordingly.)

Guy L. Fake,
U. S. D. J.

(The paper referred to was received in evidence and marked "Exhibit G–5.")

Mr. Stanziale. Now, if your Honor please, I am offering in evidence, and I believe I have shown it to Mr. Simandl, contract MHT–9, which is a contract between the Port Authority and the George M. Brewster Company, which contract contains, first, the specifications of the work to be done; secondly, the acceptance on a bid by the George M. Brewster Company for this particular work; thirdly, the stipulations and conditions of contract setting forth the limitations of the minimum pay for skilled and unskilled laborers, together with a bond submitted by the Brewster Company for the faithful performance of the conditions of the contract with the New York Port Authority, and known as Docket No. 228 of the New York Port Authority.

Mr. Simandl. I am not objecting to the form in which the offer is made. I told Mr. Stanziale I would not insist on formal proof of the contract. However, I do object, if the Court please, to the substance of the offer.

This contract is not made between these defendants. They are not a party to it. Yet, Mr. Stanziale was very careful to point
59a out that that contains certain agreements which Mr. Brewster made, or the Brewster Company made, with the Port of New York Authority; and he seemingly asks the jury

to pay special note to the wage rates and other things which the Port Authority and Brewster agreed upon, but which, so far as the evidence is concerned, was not executed in the presence of my client or executed with his consent. He is not a party to it; nor is he bound by it. Therefore, I submit it can't be put in evidence against him under any circumstances.

The COURT. I will allow the introduction of the contract in evidence and give counsel for defendant an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr. SIMANDL. All right.

Mr. STANZIALE. I will bring that out on my next order of proof, sir.

(The contract referred to was received in evidence and marked "Exhibit G-6.")

I am now offering in evidence, so that the record may be straight, these records refer to the Port of New York Authority and the Brewster Company contract, No. MHT5B, which is a supplemental contract for supplemental work during the same period of time, between the Port of New York Authority and the George M. Brewster Company, which contract known as MHT5B contains the advertisement, the contract of Brewster, the wage rate, and the specifications as to the work done together with the minimum wage an hour for both skilled and unskilled labor.

Mr. SIMANDL. Well, there is nothing to indicate that these contracts have anything to do with the work which was ulti
60a mately performed by the Cape Ann Granite Company and also, I object on the grounds that I have already indicated through Exhibit G-6. I offer the same objection to this very bulky document.

Mr. STANZIALE. The contract specifically refers to the work on the Lincoln Tunnel and the loan grant under the original grant of the P. W. A. and Port of New York Authority. I might say that it refers to the particular stonework——

Mr. SIMANDL. They didn't do all the stonework. I am trying to keep it clear; but if you don't want to, all right, go ahead.

The COURT. It will be admitted.

(The paper referred to was received in evidence and marked "G-7.")

The COURT. Now, what is your thought about the procedure; it is twenty-five minutes to four.

Mr. STANZIALE. I wonder if anyone is here from the Brewster Company; if they are, we can introduce the contract of the Brewster Company. We can introduce those documents.

HARRY T. RITTMAN, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. STANZIALE:

Q. What is your name, sir?—A. Harry T. Rittman.

Q. Mr. Rittman, by whom are you employed, by the George M. Brewster & Sons, Inc.?—A. Yes, sir.

Q. Just what is your connection with this company?—A. At this particular time I am project manager on MHT5.

Q. And at that particular time, around the period of 1937, the beginning of 1937 toward the end of 1937 to 1938,

61a you were employed by the George M. Brewster & Sons, Inc.?—A. Yes, sir.

Q. And did George M. Brewster & Sons, Inc., do any work in connection with the stonework on the Lincoln Tunnel?—A. Well, we had the general contract.

Q. And do you know of your own knowledge whether any part of this contract was subleted?—A. Oh, yes.

Q. Or subcontracted?—A. Yes.

Q. Can you tell us to whom?—A. On MHT5B, it was to Arizonica Breed; and then later the Cape Ann Granite Company was given a part of this contract.

Mr. STANZIALE. May I have this marked for identification?

(The paper referred to was marked "G-8" for identification.)

Mr. STANZIALE. May I have this marked for identification?

(The paper referred to was marked "G-9" for identification.)

Q. Mr. Rittman, I am referring to Government Exhibit G-8 for identification which purports to be a contract between George M. Brewster & Sons, Inc., and the Cape Ann Granite Company, Inc.; can you tell us whether you recognize that instrument, and if you do, tell us what it is [handing to witness].—A. Yes; this is our contract with the Cape Ann—the contract of the Port of New York Authority, MHT9.

Q. Referring to the contract between the Port of New York Authority and George M. Brewster Company, known as MHT9?—A. That is right.

Q. And that is the subcontract to the Cape Ann Granite Company?—A. Yes, sir.

62a Q. Is that the original or a copy?—A. The original.

Q. And that corresponds to the documents which we have on hand?—A. These are Port Authority contracts.

Q. That is the Port Authority contract of the George M. Brewster Company?—A. Yes.

Q. Now, Mr. Rittman, I call your attention to Goverment Exhibit G-9 for identification, which purports to be a contract dated the 24th of June 1937, between the George M. Brewster & Sons, Inc., and the Cape Ann Granite Company, Inc., referring to contract MHT5B. I ask you, Mr. Witness, if you recognize this instrument, and if you do, tell us what it is and what it refers to.—A. That is our original contract to complete the work on MHT5.

Q. And does that MHT5B refer to a general contract between the New York Port Authority and the George M. Brewster Company?—A. 5B; yes, sir.

Q. In other words, from your testimony, I take it that when you refer to the contracts, you refer to a contract known as MHT9, and one MHT5B.—A. MHT9 and 5B.

Mr. STANZIALE. If your Honor please, I offer these two instruments in evidence.

By Mr. SIMANDL:

Q. Were you present when those papers were signed, my friend?—A. I believe, not the first one.

Q. You are referring to the first one by what?—A. MHT9.

Q. That is G-8 for identification?—A. Yes.

Q. You signed this one, the other paper [handing to witness]?—A. Yes.

Q. So that you were present?—A. Yes.

Q. And the paper was signed by Mr. Hewett?—A. Yes.

Q. And Mr. Laudani was not present at the signing of this paper?—A. No, sir; I don't think—I would not say so definite, but I think so.

63a Mr. SIMANDL. I object to the admission of these papers, because none of the defendants is a party to these papers; nor does it appear that they were present when they were signed, or bound by anything that was contained in these papers.

I submit, if the Court please, that these papers in the record are only designed to make it appear as if this defendant had some obligation under those contracts, and I submit, for that reason, they are prejudicial.

The COURT. I admit them. I overrule the objection. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

(The papers heretofore marked "G-8" for identification and "G-9" for identification, were marked "G-8" in evidence and "G-9" in evidence, respectively.)

Mr. STANZIALE. Do you care to stipulate the original of the Brewster agreement?

Mr. Simandl: What do you mean by that? As far as I am concerned, I have made my objection to them.

* * * * *

NEWARK, N. J.,
Friday, March 6, 1942.

Mr. STANZIALE. Your Honor, at this time I would like to read to the jury the grant agreement.

The COURT. All right.

Mr. STANZIALE. Ladies and gentlemen of the jury, I am now referring to Exhibit G-5 in evidence, which is known as the
64a certificate of the executive order, or the grant agreement between the Port of New York Authority and the United States of America, referring to P. W. A., Docket No. 228.

Mr. SIMANDL. As I understood it, this is the exhibit that was put in evidence with the reservation, and it may be wise to wait until the testimony develops to the point of perhaps some of the things I place my objection on.

The COURT. Is that the one we admitted in a limited way?

* * * * *

The COURT. You can note your objection.

Mr. Simandl: If the Court please, it is merely a reiteration of my objections which were made yesterday. It was my understanding that until the Government indicated, by proper testimony, that the original grants which took place in 1933, as recited in that agreement, and I also think one in 1934, which would be prior to the act in question—it is my contention that those particular grants contemplated the work which is involved here and that this agreement which is supplemental to those particular grants, as a matter of expediency, merely extended, as I understand it, some work which had nothing to do with respect to the particular matter which had already been contemplated by the two previous grants.

Now, that raises in my mind—and I think it probably will raise in the Court's mind—the question as to whether or not Congress contemplated passing upon or legislating upon matters which were
65a already executed as contracts and grants, and had no application to those matters. In other words, I say the intent of Congress was not retroactive. It was in the future; and this being a criminal statute, I don't think Congress could pass a law which in effect would be ex post facto.

The COURT. I am going to permit this in evidence at this time, Mr. Simandl, and let the District Attorney read it to the jury in order that the jury can get the background of this case. I think

it is important that they should know the background in order for them to more completely understand it.

I am going to reserve passing upon the question that you have just referred to, concerning the legal effect of this statute, and I give you an exception to my qualified admission.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

MR. SIMANDL: Thank you, sir.

(Mr. Stanziale read Exhibit G-5 to the jury.)

MR. SIMANDL: We now have in evidence a document which was assigned in February 1939, long after all of the work in question was completed.

JOHN L. ELBERSON, called and sworn on behalf of the Government, testified as follows:

Direct examination by Mr. STANZIALE:

Q. Mr. Elberson, I believe you are connected with the New York Port Authority?—A. I am.

Q. Can you tell us just what your connection with the New York Port Authority is?—A. Yes; I am in the Chief Engineer's office, an administrative assistant in that office.

66a Q. Were you connected with the Port Authority in 1936, 1937, and 1938?—A. I was.

Q. In the same capacity?—A. Yes.

Q. And you were connected with them during the time that the construction of the Midtown Hudson Tunnel was being erected?—A. Yes; all during that time.

Q. You are familiar with the contracts MHT9 and MHT5B, which are referred to as Exhibits G-6 and G-7, respectively?—A. I am familiar with them to a certain degree.

Q. And you know that contracts MHT9 and MHT5B were executed by the Port of New York Authority and George M. Brewster Company?—A. I know that, yes.

Q. And the contracts provided for certain work to be given to the George M. Brewster Company as a general contractor for the construction of certain work to the Midtown Hudson Tunnel?—A. That is correct.

Q. Will you please look at Exhibits G-6 and G-7, respectively, and tell me whether the conformed copies which are in evidence, are the same as the original contracts which we have relating to such contracts of the George M. Brewster Company?

MR. SIMANDL: I have no objection about that.

I understand there was a stipulation to that effect produced yesterday. It was represented by the District Attorney, and I assume he would not tell me different.

The WITNESS. These are, no doubt, the exact copies of the original.

Q. Mr. Elberson, you were in court when I read the grant agreement?—A. Yes, sir.

Q. You know what the total amount was for the construction of this tunnel? A. Well——

67a Mr. SIMANDL. I object, if the Court please. It is absolutely immaterial.

* * * * * *

The WITNESS. The cost of the entire tunnel, the two tubes and its approaches, will amount to approximately $82,000,000.

Q. Do you know what the Government grant was?—A. My remembrance is near five million dollars. I haven't that record with me.

Q. Can you tell us the amount that the Government loaned on this?—A. I can't remember that. That is a matter of statistics. I can't remember that.

Q. Do you know, Mr. Elberson, whether the work which was done on this project was done under the grant agreement between the United States of America and the New York Port Authority which has just been read to the jury?

Mr. SIMANDL. If the Court please, I think that is asking the witness to conclude something which the record and the facts show. He was an administrative assistant in the Engineer's office.

Mr. STANZIALE. Well, if he knows.

The COURT. He says, assistant administrator. He has been there a number of years.

By the COURT:

Q. How long have you been there, Mr. Elberson?—A. Fifteen years.

Q. Now, are you in a position to answer that question of your own knowledge?—A. No; not without reference. I don't know just to which contracts this grant applied. I could not do it without reference to records.

68a By Mr. STANZIALE:

Q. Well, have you got the records with you?—A. No, sir; I have not those records.

Q. Will you go back to the Port of New York Authority records and come back on Monday, sir?—A. May I ask one question: You speak of grants——

Q. Under this grant?—A. Yes; but you read something regarding loans, too.

Q. Whether this work was done under this grant and this loan?—A. Well, I know it was done under this loan; but the grant came

quite late. The loan of the Government was used toward the payment of at least some of these contracts; that is, there two contracts.

You see, we partly financed this job ourselves; and some of it was done by the Government.

Q. Now, for the sake of clarifying some thought on this matter, would you mind explaining to the jury just how a project is conceived and the manner in which it is financed?

If there is an objection I will withdraw it.

Mr. Simandl. I object, if the Court please. The witness, first of all, has indicated that he would prefer to bring back the definite records on the subject, and I admire him for that position.

This part of the controversy is rather an involved situation, and I think that any idea by this witness as to how a project was conceived would probably be asking him to discuss the minds of the others who might have conceived the project.

Q. Can you tell us how a project is financed?—A. Any project——

69a Mr. Simandl. I object.

Mr. Stanziale. All right, if you object I withdraw it. I want to give to the jury a picture of how these things are done.

The Court. Do you want to ask him *him* how this one was financed?

By Mr. Stanziale:

Q. How was this one financed?

Mr. Simandl: I object, unless this witness knows; because he says he does not know unless he had the records before him.

The Court. As I understood him, he said that he didn't know which contracts were paid from the grant and which were paid from the loan.

Mr. Simandl. And which were paid out of their own funds. He says he wasn't sure of that. He would like to refresh his recollection.

Mr. Stanziale. He went further; he says he does know that from the loan.

By Mr. Stanziale:

Q. These two contracts that we are referring to, MHT9 and MHT5B, were paid partly from the loan of the United States of America; is that correct, Mr. Elberson?—A. That is correct.

Q. That is what you said?—A. I did say that.

Cross-examination by Mr. Simandl:

Q. There were four loans, weren't there, Mr. Elberson?—A. They were supplemented from time to time.

Q. There were four loans, weren't there?—A. I would not say that. I don't recall how many loans.

70a Q. All right. There were a number of loans?—A. That is true.

Q. And there was money from time to time allocated from those loans to the bank, that is, placed in the bank at your disposal?—A. Yes, sir.

Q. Whether or not the moneys that were used to discharge payments were from the first, second, or possibly another loan, you are in no position to say at this moment?

Mr. STANZIALE. I object; because it makes no difference, sir.

* * * * * * *

The WITNESS: It is impossible for me to answer that question until I refer to the records.

* * * * * * *

Mr. SIMANDL: Absolutely.

Redirect examination by Mr. STANZIALE:

Q. Before, you said from time to time loans were received or supplemented for this particular project.—A. Yes.

Q. And you are to get us the dates of the loans received from time to time?—A. Of course, we made requisitions on the Government for the money.

Q. That is it. Bring the requisitions in.—A. We may have copies of them, and the P. W. A. has the requisitions.

Mr. STANZIALE: Give us the dates of the requisitions. Write them on a piece of paper.

* * * * * * *

74a NEWARK, N. J.,
Monday, March 9, 1942.

Mr. SIMANDL. The following stipulation is proposed to be made between the Government and the defendants, if the Court please, of course, subject to the Court's consent. Mr. Stanziale, acting in behalf of the Government, and I on behalf of the defendants, stipulate with respect to the testimony of one Arthur J. White.

What are the numbers of those exhibits, Mr. Stanziale?

Mr. STANZIALE. The exhibits are G-10 and G-11.

Mr. SIMANDL. G-10 for identification and G-11 identification.

Mr. STANZIALE. No, in evidence.

Mr. SIMANDL. Well, I thought you were offering them in evidence after the stipulation.

Mr. STANZIALE. All right, G-10 for identification and G-11 for identification.

Mr. SIMANDL. One other question that I would like to know before I dictate, Mr. Stanziale.

What are the exhibit numbers of the contracts between the Cape Ann Granite Company and George M. Brewster; they have to be identified, too.

Mr. STANZIALE. G-8 and G-9.

Mr. SIMANDL. Now, it is my purpose to read this (Page 106) into the record, and I would respectfully ask the members of the jury to listen to it attentively because it is going to be regarded as evidence; as if a witness were on the stand there actually testifying before you; and this is a Government witness.

Do I make myself clear?

Now, Mr. Arthur J. White is called on behalf of the United States of America, and he testifies, and this is what he testifies to:

72a That during the period mentioned in all of the indictments now being tried in this court before Judge Welsh and yourselves, Arthur J. White was a stockholder, and director, and the treasurer of the Cape Ann Granite Company; and the Cape Ann Granite Company during all that time was a body corporate; that is a legally constituted body corporate.

Now, Mr. White further testifies that during the aforementioned period, that is, the dates covered by the indictments, Laudani and Rossi, the defendants here, were not officers, directors, or stockholders of the Cape Ann Granite Company.

Next, the defendant, Laudani and Rossi, were employees for the Cape Ann Granite Company. Laudani was its foreman. He was authorized to hire and discharge employees for and on behalf of the Cape Ann Granite Company; that the Cape Ann Granite Company entered into each of these sub-contracts which are identified and admitted in evidence, G-8 and G-9, with George M. Brewster & Company, a body corporate; that these two exhibits for identification, G-10 and G-11, you will recognize them of course, are the true and correct payrolls of the Cape Ann Granite Company, and that on each of these sheets there is recorded the names of the employees of the Cape Ann Granite Company who performed the work, in its behalf, required for the performance of the aforementioned contracts which George M. Brewster, a body corporate, together with the dates upon which the employees performed said work, the hours which said employees worked, and the rates per hour said employees were paid by the Cape Ann Granite

73a company for performing said work, and the total sum and sums each of said employees of the Cape Ann Granite Company were paid by the Cape Ann Granite Company for the week specified on each of the payroll sheets, together with the date of such payment.

That the Cape Ann Granite Company did not receive from any of its employees mentioned in these payroll sheets, Exhibits

for identification 10 and 11, or from any other person or source, any refund, rebate of any kind, or the return of any part of the compensation which it, the Cape Ann Granite Company, paid to any of its said employees.

That the Cape Ann Granite Company did not authorize either directly or indirectly, in any way, their aforesaid employees, Laudani, and Rossi, the defendants to induce any of the employees of the Cape Ann Granite Company mentioned in the aforementioned payrolls, Exhibits for identification G-10 and G-11, by force, intimidation, threats to secure dismissal of such employees or by any other means, or in any way whatsoever to give up, return, or kick back to it, or to any other person, any part of the compensation shown to have been paid to the aforementioned employees of the said Cape Ann Granite Company.

Further, that he is the Arthur J. White who signed and subscribed to each of the affidavits contained on each of the respective payroll sheets found in Exhibits for identification G-10 and G-11, aforesaid, and that the statements contained in each of the affidavits are true and correct. You will notice an affidavit on the back of each one of these sheets; and he says that he is the Arthur J. White who signed these papers.

74a Now, this is stipulated between Mr. Stanziale and myself that you, ladies and gentlemen of the jury, are to take this stipulation as if this witness, Arthur J. White, were on the stand and delivering himself all this testimony to the same effect as I have done it. In other words, he testified.

Do I make myself clear.

Mr. STANZIALE. In other words, that the jury has a right in its deliberations to either believe or disbelieve what——

Mr. SIMANDL. It is testimony.

The COURT. I hesitate to even amplify it or repeat it; but if I may say to the jury, that they are to consider, under this stipulation, that Mr. White had taken the stand to testify to these things that Mr. Simandl says, it is just the same as if he had testified.

Mr. STANZIALE. Your Honor, I will call now the gentleman from the New York Port Authority and send him back to his work.

The COURT. All right.

JOHN L. ELBERSON, recalled, testified further as follows:

Direct examination by Mr. STANZIALE:

Q. What is your name again, Mr. Witness?—A. John L. Elberson.

Q. Mr. Elberson, on Friday when we adjourned, we asked you to get certain information relating to requisitions for money

from the P. W. A., and also the dates that the money was
75a sent to the New York Port Authority. I believe that counsel for the defense has also asked you to get such information. Have you obtained that information?—A. I have, to a certain extent, yes. I believe, so far as you are concerned, I have what you need.

Q. Will you tell us, please?—A. Under the grant which the Port Authority received from the Government for $4,780,000, that money was obtained by the Port of New York Authority by what was called requisitions, which were made upon the Government or P. W. A. from time to time, depending on how much work was done. As the work progressed we asked for certain funds. There were four requisitions under that grant. Do you wish me to give you the amounts of the grant, the dates of the requisitions, and the dates the amount was received?

Q. Yes, the date, the amount; and the date received.—A. All right. Requisition No. 1 was dated February 28th, 1936 in the amount of $2,294,156.49. That amount was received from the Government on April 28, 1936.

Requisition No. 2: in the amount of $1,161,667.81; dated October 14, 1936. That was received from the Government November 14, 1936.

Requisition No. 3: in the amount of $844,175.70, dated July 12, 1937; was received by the Port of New York Authority August 30, 1937.

The last requisition, No. 4, in the amount—by the way, that was split in two amounts because part of it was withheld. Part of it was $453,000, and the other part was $27,000. It was dated March 16, 1937. The $453,000 was received June 7, 1939. The $27,000 was received August 30, 1939. The total of all those requisitions equals the total of the grant, or $4,780,000, which the Port Authority received from the Government.

76a Q. When you say a grant, you mean that that is an outright gift?—A. That is a grant in order to assist the Port Authority to build the Lincoln Tunnel.

Q. And in addition thereto there was a loan?—A. There was a loan. Agreement dated September 1, 1933——

The COURT. Dated September 1, 1933?

The WITNESS. Yes.

A. (Continuing.) It was not to exceed $37,500,000. That was also to assist the Port Authority in financing the Lincoln Tunnel.

The balance of the cost of the tunnel was financed, or would be financed, by the Port Authority by the sale of bonds.

Now, further on, however, that loan was liquidated by the Port Authority long before we ever got the full amount of it.

In fact, we only borrowed $12,300,000 on that loan, and that amount was fully paid back to the Government in December 1935.

Q. In December 1935 the loan of 1933 was liquidated?—A. That is the idea.

Q. And a new agreement was made?—A. At that particular time the P. W. A. was making grants to organizations such as the Port Authority to assist in the construction of tunnels and other structures, mainly for the purpose of employing people. So many people were out of work at that time.

Due to the money market at that time, or the bond market, we were not able to raise the amount of money we needed to cover the cost of construction at that time; so the Government made us a grant of this $4,780,000.

Q. Which is the subject of the grant agreement that has been read in evidence?—A. Yes, sir.

77a Q. That grant agreement is separate and distinct from the agreement of 1933?—A. Absolutely and entirely different.

Q. In other words, the 1933 was a loan and no grant was attached to it at that time?—A. That's the idea.

Q. So that the one of 1935 contained an outright grant of the Government, together with the loan of $12,000,000?—A. Pardon me, sir——

Q. The grant, rather?—A. The grant had nothing to do with the loan previously liquidated.

Q. I see. This is a new agreement altogether?—A. Entirely new, yes, sir.

Q. And this agreement of 1935 was supplemented from time to time?—A. Yes, it was, because first of all— Are you talking about the loan or the grant agreement?

Q. The grant.—A. The grant was—the grant agreement was supplemented mainly for the reason of delineating more clearly just what parts of the structure were to be paid for, in part, at least, by these grants.

Q. The grant money?—A. Yes.

Cross-examination by Mr. SIMANDL:

Q. The original plan under which the Government agreed to loan the large sum of money that you mentioned, in 1933, embraced stonework which was ultimately performed by the Cape Ann Granite Company, did it not?—A. It did, yes, sir.

Q. And the Government loaned the Port Authority, I think it is some $37,000,000, and from time to time the Port Authority availed themselves of that loan in the construction of the tunnel, is that so?—A. The Government did not loan the Port Authority $37,500,000.

Q. They did not actually pay that. They agreed to loan that?—A. Yes: that is right.

78a Q. But from time to time, on account of that loan, they did advance some moneys on account of the construction work there, isn't that so?—A. It is true; yes, sir.

Q. And then, finally, the Port Authority caught up with itself and said they didn't want any of the Government's money under that loan, and borrowed some $12,000,000 to pay it back?—A. That is true, yes.

Q. When did they pay that money back?—A. In December, 1935.

Q. In December of 1935. Now, the Cape Ann Granite Company were not the only ones that were doing stonework there in Weehawken. They only did a small part of it, isn't that so?—A. That is right; only a part of it.

Q. And the only part of the Government funds that appertained to the year 1937 and was actually paid in 1937 is No. 3 requisition of the grant, which was made on July 12, 1937, and was paid on August 30, 1937, isn't that the only one?—A. That is correct.

Q. Can you tell whether or not that money was actually used to discharge any of the payrolls of the Cape Ann Granite Company?—A. I cannot.

Mr. SIMANDL. That is all.

Redirect examination by Mr. STANZIALE:

Q. Now, Mr. Elberson, the general contract between the New York Port Authority and George M. Brewster & Sons covered the stonework on this particular Lincoln Tunnel. After that was accepted, the work was begun by the general contractor through its subcontractor on October 15, 1936, is that correct?—A. I can't verify that from my memory. It was about that time.

Q. Is this the exhibit [handing to witness]?—A. This does not signify the date of the start of work, at all.

79a Q. It signifies the date of start of the contract?—A. This was the date of the signing of the contract with George M. Brewster.

Q. Yes, and in that contract is covered the specifications of the work that Brewster was supposed to do?—A. Correct, yes, sir.

Q. And in the specifications there, Item No. 13, relates to the work, to the stonework, which the Cape Ann Granite Company as subcontractor performed for and on behalf of the general contractor, George M. Brewster?—A. That seems to be correct, yes; but that is not part of the specification. That is part of the contract.

Q. The contract itself?—A. Yes, the schedule of prices, as we call it.

Q. And in the original exhibit there, G-8, I believe it is——
A. Oh, yes, G-6.

Q. — G-6, there is contained in that contract a specification of the particular work to be done under the particular contract.—A. Yes, that is right.

Q. And the same applies, Mr. Elberson, to Government Exhibit G-7, between the New York Port Authority and the George M. Brewster Company, which is a supplemental contract for the work that you have on hand, and covering other items of work, such as the steel construction and so forth?—A. Yes.

Q. And which was done, so that the record may be clear, by the Cape Ann Granite Company for and on behalf, as subcontractors, for the George M. Brewster Company, the general contractors, is that correct?—A. Yes, that is correct.

Q. And which contract—I am now referring to Exhibit G-7—refers to the date of January 21, 1936 [handing to witness]?—A. Well, that was the approval of that contract by the Federal Administration of Public Works. They approved it as of that date, February 21, 1936.

80a Q. Mr. Elberson, when a contract is entered into, as was in this particular case, between the George M. Brewster Company and the Cape Ann Granite Company, that contract had to be subsequently approved by the P. W. A., the Government agency, rather?—A. Correct.

Q. In other words, there were three parties to the contract, the George M. Brewster—— A. Four, really.

Q. Yes, four. The George M. Brewster Company, the Cape Ann Granite Company, the New York Port Authority, and the P. W. A.?—A. Correct.

Q. Referring now to Exhibits G-6 and G-7, the work on the particular items as contained in the contracts themselves, that was the time when the work was actualy contracted for by the Port of New York Authority and the George M. Brewster Company, is that correct?—A. That is right.

Q. And this work was financed by the requisitions that were made and received by the New York Port Authority.—A. It was probably financed by such funds.

Mr. SIMANDL. What work do you mean?

Mr. STANZIALE. The work under the contracts G-6 and G-7.

The WITNESS. It was—Wait a minute. I would like to revise that answer.

As I stated previously, it was impossible to earmark just what funds were used to pay for the different part of construction on the tunnel.

Q. Yes, but part of this grant money was used in paying under the terms of the contract of the Brewster Company?—A. We cannot definitely state that.

The COURT. Mr. Stanziale, would you mind if I ask a question which might be getting the negative viewpoint to establish somewhat the affirmative?

81a By the COURT:

Q. Were there any limitations or restrictions or earmarks imposed by the Government on this grant?—A. No, except that it must be used in financing certain sections of the Lincoln Tunnel.

Q. You mean gebgraphical sections?—A. Not exactly—yes, geographical, if you wish. For instance, the plaza and the approaches to the plaza, and various things of that sort.

By Mr. STANZIALE:

Q. Which were covered as the subject matter of the particular work of the George M. Brewster Company with the Cape Ann Granite Company?—A. Yes. Their contract comprised part of the work which this grant was to be used on.

Re-cross-examination by Mr. SIMANDL:

Q. Whether it was actually used or not, you don't know?—A. Our auditors are unable to locate that money.

Mr. SIMANDL. That is all.

Redirect examination by Mr. STANZIALE:

Q. This particular money received from the grant went through the general fund for the payment of the work expended for this particular project?—A. The funds of the Government, plus the funds of the Port Authority, were used in the general financing of the entire project. We cannot nail down just where each dollar went to.

Q. But this went all in one fund?—A. That is true.

Mr. STANZIALE. That is all.

* * * * *

82a SANTE SPATOLA, called and sworn on behalf of the Government, testified as follows: (The testimony of this witness was given through Mr. Langione, the interpreter.)

Mr. STANZIALE. Will you translate what he just swore to?

The INTERPRETER. He just took the oath.

The COURT. Will you just give me the witness' name?

The INTERPRETER. Sante Spatola.

Direct examination by Mr. STANZIALE:

Q. Where do you reside?—A. 1143—I mean 45, Thierot Avenue, Bronx, New York.

Q. What is your occupation?—A. Stone mason.

Q. How long have you been a stone mason?—A. Since I was of the age of 13.

Q. And how long are you in this country?—A. Since 1921.

Q. Do you belong to a union?—A. Yes, I do.

Q. What Local is that?—A. Local 78, New York.

Q. Do you know Frank Laudani?—A. Yes, I do.

Q. Do you see him in court?—A. Yes, I do.

Q. Will you please point him out?—A. [Indicating.] That gentleman.

Mr. STANZIALE. For the record, identifying the defendant Frank Laudani.

Q. Do you know Alfredo Rossi?—A. Yes, I do.

Q. Do you see him in court?—A. [Indicating.] That is the gentleman right there.

Mr. STANZIALE. Identifying the defendant, Alfredo Rossi.

83a Q. Now, were you employed by the Cape Ann Granite Company on the Lincoln Tunnel project, Docket No. 228?—A. Yes.

Q. And which work was on the Lincoln Tunnel project?—A. Yes, sir.

Q. And known as Docket No. 228?—A. I don't know the number.

Q. And on what side of the project were you working, on the New York or the New Jersey side?—A. On the side of New Jersey.

Q. Who hired you for this work?—A. Mr. Laudani hired me.

Q. Do you remember when you started to work?—A. I don't remember exactly but I believe it was in the middle of December—December of 1937.

Q. And will you please tell us over how long a period you worked there?—A. About nine or ten months, I believe; but I am not sure.

Q. Was it in 1936 or 1937 that you went to work?—A. 1937.

Q. Now, at what rate of pay were you hired? What was the rate of pay that you were to get?—A. Before was $12, and I believe in the month of June, on account of the strike that happened, the salary was raised to $13.30.

Q. That would be when you first started to work at the rate of $1.50 an hour, is that correct?—A. Yes, sir.

Q. And then subsequently, in June you were to receive $1.33?—A. Yes, sir.

Q. Now, do you remember the first week that you were working on this project?—A. I think my first week that I was working there was in the month of December, as I said before.

Q. On that first week that you were working did you see Alfredo Rossi?—A. Yes, I did.

84a Q. Did you talk to Alfredo Rossi?—A. Yes, I did.

Q. What if anything did Alfredo Rossi say to you?

Mr. SIMANDL. I object on behalf of Laudani, on the ground that unless it appears that Laudani was present, that conversation cannot be binding on Mr. Laudani.

The COURT. I sustain your point; and at this stage that conversation and its effect will be limited to Mr. Rossi alone.

By Mr. STANZIALE:

Q. What did Mr. Rossi say to you?—A. Mr. Rossi told me that I had to kick back—kick back 25 cents per hour.

Q. Was that for each and every hour that you worked?

Mr. SIMANDL. I object now. That is leading. I think the whole conversation should be related.

The COURT. Ask him that first; then if there is a point that he has not covered, you may be specific to direct his attention to it.

Q. Did Mr. Alfredo Rossi direct your attention as to how or from what funds you were to pay back or kick back this 25 cents an hour?

Mr. SIMANDL. I object. I think that the question can be asked what was said.

The COURT. Of course, Mr. Simandl, taking the testimony through an interpreter, we would have to use a little discretion and allow a certain amount of latitude; but I think if the District Attorney first asks what the conversation was, we will let the witness give it as fully as he can, and then if it has not been covered to the satisfaction of the Government, the Government then can take it up with more particularity.

85a By Mr. STANZIALE:

Q. Will you ask the witness, please, to tell us the full contents of the conversation with Mr. Rossi at that particular time?—A. Why, I was going home, because I was living in New York. We went home together; and on a ferry boat he told me that I had to kick back 25 cents per hour.

Q. Was anything else said?

The COURT. Tell us all that was said.

A. He told me that I had to pay that amount. I told him that I was agreeing to pay that amount of money because I had my family to support.

Q. What did Mr. Alfredo Rossi say?—A. Mr. Rossi didn't say nothing as to that.

The COURT. Can I ask a question, if you don't mind? If you object to it, Mr. Simandl, don't hesitate, and I will rule on it just the same.

Mr. SIMANDL. All right.

By the COURT:

Mr. Langione, will you ask him if he had told us all the conversation? I want to know if Mr. Rossi said what it was for and for whom it was to be paid, and where it was to be paid.—A. He told me that I had to kick back 25 cents an hour, and I had to give this money to him.

By Mr. STANZIALE:

Q. Now, is that the only thing that Mr. Alfredo Rossi told you? Was there any conversation about anyone else?—A. At that time that is all he told me.

Q. Now, did you ever have any other conversation with Mr Rossi?

86a Mr. SIMANDL: Now, can I know when this time was?

Mr. STANZIALE. The first week.

Q. You say that is in December, 1937?—A. Yes.

Q. Now, did you ever have any other conversation with Mr. Rossi?

Mr. SIMANDL. Now, this of course, this conversation, and all these conversations, are not binding on Mr. Laudani.

Mr. STANZIALE. We understand that.

Mr. SIMANDL. All right. I just want it on the record, that is all.

A. I had another conversation with Mr. Rossi when the half of the strike was settled, in the month of June, when the wages raised.

The COURT. That was the June following the December?

Mr. STANZIALE. That is right.

The WITNESS. At that particular time he told me that my kick-back should be 35 cents an hour.

Q. Now, was there any conversation with Mr. Rossi, at that particular time, as to who was to get this money?

Mr. SIMANDL. I object to that, if the Court please. I submit the conversation should be given.

These leading things, unfortunately, do not help the situation.

The COURT. Mr. Simandl, I will overrule your objection there and give you an exception, because I feel that is a proper

87a question. It does not suggest an answer. It merely directs the inquiry to a specific stage of the affair.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Now, if nothing happened the witness can say so, and if something did happen, why, it would be to refresh his recollection by a reference to the incident which may or may not have happened.

The INTERPRETER. May I have the question, please?

(The pending question was read by the reporter.)

A. He didn't say to me who that money was going to. I had an order from him to give it to him, and that is all I did.

Q. Now, going back to the time in June when, I believe you testified, that the rate of pay was increased from $1.50 to $1.80. Did you talk to anyone other than Mr. Rossi as to the amount that you had to pay?—A. Yes, I spoke with Mr. Laudani, and I told him——

Q. When was this?—A. Right after the strike was fixed and the raise of the wages happened. I spoke with Mr. Laudani and I told him that I though it was too much money to kick back.

Q. And what did Mr. Laudani say to you?—A. Mr. Laudani, at that time——

Mr. SIMANDL. Wait a minute. This I object to as to Mr. Rossi. Of course, this is not binding on Mr. Rossi.

88a Mr. STANZIALE. We understand that. According to the legal, technical language we understand that. So that we don't have any interruption, we will stipulate as part of the record that any testimony or conversation that refers to any of the other defendants, that testimony is directed solely to the person he is making the statement to or talking about.

Mr. SIMANDL. Thank you very kindly. That will relieve me.

Mr. STANZIALE. May I have the question?

Q. (The pending question was read by the reporter.)—A. Mr. Laudani told me that that was the order from the office.

The COURT. That that was what?

The WITNESS. The order from the office.

Q. Can you tell us what office?

Mr. SIMANDL. I object to that, if the Court please.

The COURT. Did he answer that?

The INTERPRETER. Yes: "I don't know what office it was."

Q. Where did you have this conversation with Mr. Laudani in the month of June that you testified about?—A. In the little office on the job.

Q. What did he call it, Mr. Langione?

The INTERPRETER. "A little shack," he said.

Q. Now, I believe you testified that when you first started to work that your rate of pay was $1.50 per hour, is that correct?—A. Yes, sir; it is correct.

89a Q. And did you, immediately when you started to work, Mr. Spatola, pay 25 cents an hour from your wages?—A. Yes, sir; as soon as I started to work.

Q. Now, who did you pay?—A. I paid to Mr. Rossi (in English) and once in a while I give him and a couple of times I give Mr. Laudani.

Q. These payments began when you first started to work? The kick-back was made when you first started to work?—A. Yes, sir.

Q. Now, when would you pay this kick-back money, Mr. Spatola

Mr. SIMANDL. If the Court please, the only dates that are mentioned in the indictment, so (Page 129) far as Mr. Spatola is concerned, is Indictment 7-C, and it covers certain particular dates; and I suppose we are entitled to have those dates established and not a long line of dates, so that the bag is going to be opened up to a new field.

I have enough dates mentioned in these 43 counts here, and I think I am entitled to have the specific offenses mentioned in these indictments proven.

The COURT. I say you are not. The Government is not restricted to those dates mentioned in this indictment.

If there had been a stipulation, or bill of particulars, covering the exact dates, the Government would be so bound; but any time within the statutory periods or brackets mentioned in the indictment are evidential, and the Government would not be restricted.

I give you an exception so that your record may be complete.

(Exception signed and sealed.)

GUY L. FAKE,
U. S. D. J.

90a Mr. SIMANDL. I have no question about it, if the Court please, but they certainly can't put in this kind of testimony and say that that proves the dates specified in the indictment. Let them establish the original dates.

The COURT. No, it would not prove the dates specified in the indictment, but it would prove, if they do prove it, the commission of the offense within the statutory period; and that is the point that the jury has to decide.

I give you an exception so that your record will be correct there.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr. SIMANDL. All right.

By Mr. STANZIALE:

Q. And did you continue, Mr. Spatola, to make payments from your first pay check up to and including the time that you stopped working?

Mr. SIMANDL. I object, if the Court please. This is a very leading question. I think the witness should be asked what he did.

The COURT. Yes, that could be revised Mr. Simandl.

Ask him what he did.

Q. What did you do every pay-day?—A. As I said before, I was giving back the amount they told me every time that I was receiving the salary; and as I said before, I paid once to Mr. Rossi and other times to Mr. Laudani.

91a Mr. STANZIALE. (To the interpreter.) No; you made a mistake. He didn't say "once to Mr. Rossi."

The INTERPRETER. He said "once."

By Mr. STANZIALE.

Q. How many times did you pay Mr. Rossi?—A. A couple of times. A couple of times to Mr. Laudani and the rest of the time to Mr. Rossi.

Q. Was this done each and every time that you received your pay check?

Mr. SIMANDL. I object to that, if the Court please.

Mr. STANZIALE. I have established it, your Honor. I am just calling his attention to the question.

The COURT. Objection overruled; exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

A. Yes.

The COURT. You might make that question in the alternative, yes or no; so that there won't be any implication of any suggested answer.

I don't mean that you do it purposely, and I know Mr. Simandl, in his objection, does not mean that; but the form of the question might in a psychological way suggest the answer to the witness. That is what we would like to avoid.

By Mr. STANZIALE.

Q. Now, will you tell us, Mr. Spatola, where you paid Mr. Rossi the kick-back money?—A. On the job, before we
92 were going home; and once, I gave him in some restaurant in the Bronx at 116th Street, Harlem.

Mr. SIMANDL. I didn't get that.

The INTERPRETER. 116th Street, Harlem.

Mr. STANZIALE. All right. May I start now?

Mr. SIMANDL. I am trying, if the Court please, to be as patient as I can. I have not entered into any argument; all I ask is that the witness speak up very distinctly.

Q. Can you tell us, Mr. Spatola, where you paid Frank Laudani?—A. At the shanty of the job, a little office.

The COURT. Mr. Stanziale, do you mind developing a little more in detail the circumstances surrounding these payments; how he paid him; whether any account was kept; whether any receipt

was given; how they arrived at the amount that was to be paid and received; and all that was said and done?

Now, I will have to give you some latitude to bring your inquiry to those phases of it if the witness does not cover it voluntarily. I am giving you that latitude because, I believe, Mr. Simandl, the circumstances require some latitude, and I will try to keep within reasonable bounds. If you think it is objectionable, get yourself on the record so we can rule on it.

Q. Now, Mr. Spatola, who deducted the money from your payroll?

Mr. SIMANDL. Now, if the Court please, I did not get that question at all.

The COURT. How did you know how much money to pay?

93a The WITNESS. I figure the hours that I was working and I give him the money back for each hour that I was working for.

Q. Now, when you gave him the money that you testified about, to Alfredo Rossi, what did Rossi do with this money?

Mr. SIMANDL. I object. If he knows.

Mr. STANZIALE. When he gave him the money, Mr. Simandl, let's stop interrupting with this witness' examination. He gave him the money personally.

The COURT. He gave it to him in actual cash, did he?

The INTERPRETER. Will you read the question, please?

Q. (The pending question was read by the reporter.)—A. I don't know what they did with the money.

Q. Were you present when you gave him the money?—A. Yes, certainly I was there when I gave it to him.

Q. Now, when you gave him the money what did you see Mr. Rossi do with it; did he put it in his pocket or did he put it in a drawer? What did he do with it?—A. Every time that I paid Mr. Rossi, he took my money and put it in his pocket, and never give me a receipt for it.

Q. Now, was there any conversation with Mr. Rossi when you gave him this money?—A. The only conversation was about the amount of hours that I was working, and I showed I worked so many hours and this is my kick-back.

Q. Were you present when the money was handed over to Frank Laudani?

94a Mr. SIMANDL. Just a minute. What are you talking about? Are you talking about the money that he is supposed to give to Laudani?

The COURT. The money that was supposed to be given to Laudani.

Mr. SIMANDL. He is talking about the instance when he was supposed to have given it to Laudani.

The INTERPRETER. What was the question?

Q. (The pending question was read by the reporter.)—A. No, sir.

Q. No. Mr. Spatola, the question was, were you present when you gave the money to Mr. Frank Laudani; not Alfredo Rossi.—A. Yes, sir.

Q. And I believe you testified that it was in the shanty.—A. Yes, sir.

Q. When you gave the money to Mr. Frank Laudani was it in cash or otherwise?—A. Cash.

Q. What did Mr. Laudani do with the money that you gave him? Did you see where he put it?—A. I saw Mr. Laudani with a list in his hands; and when I gave him my mony, I don't know what they did with it.

The COURT. Did you take a receipt?

The WITNESS. No, no receipt was given.

By Mr. STANZIALE:

Q. I believe you just testified that you saw a list that Mr. Laudani had. Did you see what if anything Mr. Laudani did with the list when you handed him the money in cash?—A. I believe that——

Mr. SIMANDL. I object to that "I believe."

Mr. STANZIALE. Now, Mr. Langione, will you please interpret as best you can from my questions, if you don't mind.

95a Q. What if anything did Mr. Laudani do with the list when you gave him the money in cash? What did he do with the list?—A. I don't know what they did with the list.

Q. Did he mark the list in his——

Mr. SIMANDL. Oh, if the Court please——

Mr. STANZIALE. I have to have some leeway. I realize this is a leading question, but I have to have some leeway.

The COURT. We will see if we can get around that without violating the rules of evidence.

Mr. STANZIALE. I ask the Court for leeway on my question.

The COURT. What you are asking is perfectly legitimate, if we can get the question to him without violating the rules of evidence.

Mr. SIMANDL. But he didn't give all the answer, as I understand the answer.

I don't understand the Italian language, I think Mr. Stanziale does; and what I understood him to say was——

The COURT. You may ask him with more particularity about this list that he saw; where Mr. Laudani kept the list; where he had it;

whether it was in his pocket or in his desk, or in the shanty; and then I think it would be perfectly proper if you were to ask him: When he paid this money; whether he saw the list at the time the money was paid. You may ask him that as an interrogation.

Mr. SIMANDL. Why wasn't the entire answer put into the record?

Now, as I understand it, I may be wrong, but I understood that he said, "I don't know what happened to the list. I paid my money; went out of the shanty and went home;" is that right?

Mr. Langione, I am speaking to you.

96a The INTERPRETER. I don't remember, your Honor.

The COURT. Well substantially that, Mr. Simandl; but you see, we are taking this testimony under somewhat of a handicap as we always do under an interpreter.

Ask him to tell us more about that list.

By Mr. STANZIALE:

Q. Let me ask you this question: You testified that you saw a list that Mr. Laudani had. Where was the list when you saw it?—A. On the table of the little shanty.

Q. How big was this list?—A. Smaller size than that; about that big, about that size [indicating].

Mr. STANZIALE. Indicating the sheet that the stenographer is using (8½ by 10½).

Q. And when you handed the money to Mr. Laudani, did Mr. Laudani put anything on the list or mark anything on the list?

Mr. SIMANDL. Why not tell him what you want him to say and he will say it?

The COURT. I will permit that question if we can't get an answer any other way. For the time being, I will sustain the objection.

Do you mind asking what if anything he saw Mr. Laudani do when he paid the money, so far as this list is concerned? Now, that is getting pretty close to the ice, but I think it is warranted in this case.

Mr. SIMANDL. May I have an exception?

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

97a The COURT. Will you ask him what if anything he saw Mr. Laudani do in connection with the list when he paid this money?

The WITNESS. I saw Mr. Laudani, that he marked down on the list and he went away.

By Mr. STANZIALE.

Q. Oh, he marked down on the list.

Mr. SIMANDL. What did he say? I have to get this by remote control.

I understand from Mr. Laudani who does speak Italian that he didn't say that there was anything marked on the list. What he said is, "I gave him the money. The list is on the table, and I went home."

The INTERPRETER. Your Honor, I am here to interpret to the best of my ability; and I understand the language pretty well.

The gentleman said he paid the money and it was marked down.

Mr. SIMANDL. Well, Mr. Laudani was also an interpreter in Brooklyn for a number of years.

By Mr. STANZIALE.

Q. Ask him this question: Did he see Laudani mark on the list that he paid the money?—A. Yes, sir, I did.

Mr. SIMANDL. I didn't hear the answer or the question.

The COURT. The question was now a direct one, in view of what you said.

The question was, did you see Mr. Laudani write down anything when the money was paid?

Mr. SIMANDL. Well, may I have an exception to that, please?

98a The COURT. Yes, I will give you an exception; had it not been brought about by the fact that your client disputed the testimony, I would not have permitted that question; but the fact that it was disputed, I permitted that direct question to be asked.

Members of the jury, I think I ought to tell you, so that you will understand why these objections are made to the testimony.

The rules of evidence do not permit an attorney on direct examination to frame his question in such a way that it suggests the practically saying yes, yes, yes, to the question put by the attorney, as being leading, and in that way to tell the story.

That is the reason why Mr. Simandl very properly interposes these objections, to prevent that from being done; and all of us try to prevent it as much as we possibly can. But there are certain times, and this is one of them, when a little latitude has to be given to the attorney in framing an otherwise leading question; and if Mr. Simandl has a witness that has to be taken through an interpreter, we will extend, of course, the same latitude to him.

I want you to understand when these objections are made, that they are not just capricious; there is a real reason for that objection.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

By Mr. STANZIALE.

Q. Now, Mr. Spatola, I believe you have already testified
99a so that we may be clear on that, that at the time you received $1.50 per hour, that you kicked back 25 cents an hour up to the month of June; and that you kicked back thereafter, for the month of June to the time that you disconnected or severed your connection with this concern, the rate of 35 cents, and that was done during the entire length of your employment with the Cape Ann Granite Company. Is that correct?

Mr. SIMANDL. I object to the question on the same ground that I interposed before.

The COURT. Objection overruled; exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

The COURT. Will you ask him why he paid this money; what was it for? He used the expression "kick-back," and he said he agreed to pay it.

Mr. STANZIALE. He did, your Honor. He had testified what it was for.

He said that Rossi said to him, that he would have to pay 25 cents per hour.

The COURT. By order of the office.

Mr. STANZIALE. No, no. He said that he told Rossi that he had a family to support, and therefore would pay this money.

The COURT. Yes.

Mr. SIMANDL. And then he subsequently testified that when he spoke to Laudani, he complained to Laudani that the money which he was paying was too much, and Laudani said he would have to pay, because those were the orders of the office.

100a The COURT. Office, he said?

Mr. SIMANDL. Yes, office.

The COURT (to the interpreter). Will you ask the witness if he has told us everything that Mr. Rossi said to him with reference to the payment of this money? Ask him if there is anything that he has not told us, why he was paying this money.

The WITNESS. I don't know what was the reason for it, but I was paying to keep my job.

Mr. SIMANDL. I object to that and move to have that latter part stricken. That is a conclusion on his part.

The COURT. I agree that it is a conclusion, but it shows his motive, and his reason for paying.

At this stage, I think it should stand and I will give you an exception to it.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr STANZIALE. I was wondering, if your Honor please, I have lost my trend of thought.

I asked a question whether he paid 25 cents per hour up to the month of June, and whether he paid 35 cents per hour from June to the time that he severed his connections with this concern. I don't know whether he answered the question.

The COURT. Do you want to repeat it to him?

By Mr. STANZIALE:

Q. Mr. Spatola, did you pay the 25 cents per hour when
101a you were earning $1.50 per hour, from December up to June; and did you pay 35 cents an hour when you were earning $1.88, from June to the time that you severed your connections, each and every week?

Mr. SIMANDL. I object to that, if the Court please. That is most leading. If he has testified to that, then it is in the record; but I certainly object to this general form of trying to summarize what this witness said; and I think, if the Court please, that it is terribly leading. It is not fair.

You see, let me point out to your Honor: They have attempted to cut up in this indictment certain specific dates, and they have set them up into certain counts, mentioning this man and several other men. They have set them up into specific counts in some six indictmets.

Under the case of U. S. vs. Snow, a U. S. Supreme Court case, it would be one single offense, a continuing single offense; and they could not carve out of one single offense some 15 different counts as they have done.

They have chosen to treat it as a specific offense, and the nature of the offense indicates that they have specified certain dates and the exclusion of others.

Now, he tries to have a blanket question include all sorts of dates over a period of some six or eight months in the hope that, thereby, he will establish these specific counts in the indictment.

Now, that is not a fair way to try a man, because, if the Court please, if each one of these indictments were doubled up, your

Honor would be able to sentence a man under such an indictment for longer than he would probably live; and by this testimony, by one single sweep of his hand, he seeks to estab-
102a lish that as one indictment without giving us anything specific other than the dates that may be embraced in his answer.

* * * * * *

Mr. SIMANDL. May I have the specified date now that he says that Mr. Laudani is alleged to have received these payments?

The COURT. You have a right to ask him for those dates.

Mr. SIMANDL. I want to know now.

Mr. STANZIALE. I will tell you.

Mr. SIMANDL. No, no. (To the witness:) You tell me the dates that this man was supposed to have received——

The COURT. He will have to give you those dates in conjunction with the payrolls that are admitted in evidence, because it is not at all reasonable that the witness would be able to say that the 1st of May, or the 10th of June, or the 11th of July, or the 5th of July; but he can say, during the period of time that he was employed there, "I was paid each week; and each week I was paid there, I paid over a certain amount to the defendants," and then the payrolls which are admitted into evidence can further throw light on the dates when those payments were made. Now, you can't do more than that.

Mr. SIMANDL. But, if the Court please, we are charged in four specific counts. Which count refers to which date?

The COURT. Well, you wait until the Government has finished its case. When the Government is finished with its case, with the oral testimony and documentary proof, it may be that those dates will be so specifically set forth that you won't have
103a any objection; but right now it is a little bit too immature to say that you want him to specify a certain date.

I think we will get along on this all right.

Mr. SIMANDL. May I have an exception, if the Court please?

The COURT. Yes, sir.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr. STANZIALE. I am through with the witness, Mr. Simandl; you may cross-examine.

The COURT. We will have the last question read and see if it has been answered, please.

Q. (The pending question was read by the reporter.)—A. Paid 25 cents per hour from the starting on the job up to June. From

June, until a month before I left the job, I paid 35 cents per hour; and the last month that I was connected with the firm, I paid only 30 cents per hour.

The COURT. Now, the objection of Mr. Simandl goes to that question and that answer, and the exception allowed covers it.

Mr. STANZIALE. One more question, please.

By whose authority did you reduce the payment, the last month that you were connected with this concern, from 35 cents to 30 cents?

Mr. SIMANDL. If the Court please, that is beyond the scope of this indictment.

The COURT. I don't want to make any comment on that, Mr. Simandl, if you don't mind. I am going to overrule your objection, and by not making any comment I am not be-

104a littling your objection; but I think it is better for the Judge not to discuss those things any more than he has to.

Mr. SIMANDL. Exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

By the COURT:

Q. By whose authority did you reduce it from 35 cents an hour, your payments of the last month?—A. Because so told me Rossi.

By Mr. STANZIALE:

Q. Under what circumstances, or how did Rossi tell you that you should pay 30 cents instead of 35 cents an hour?—A. A joking way Rossi came to me——

Mr. SIMANDL. When was this?

Mr. STANZIALE. The last month.

A. (Continuing.) The last month that I was connected with the firm and says that I was promoted, and instead of paying 35 cents an hour, I had to pay 30 cents.

Q. Did he tell you who promoted you?—A. He told me the boss promoted me, and I had to pay 30 cents instead of 35 cents an hour.

Q. Who was the boss?—A. The boss was only one, and was Mr. Laudani.

Mr. STANZIALE. That is all.

The COURT. First we will take our lunch. I don't want to interrupt Mr. Simandl in his cross-examination. We will take until two o'clock.

Noon recess.

105a AFTERNOON SESSION

Mr. STANZIALE. I now formally move that the pay-roll sheets be received in evidence.

(The pay-roll sheets were received in evidence and marked G-10 and G-11 respectively.)

SANTE SPATOLA, resumed the stand.

Cross-examination by Mr. SIMANDL:

Q. Mr. Spatola, I notice that you have been in the United States for 22 years, is that so?—A. Yes, sir. I do.

Q. And during that time you learned to talk some English, didn't you?—A. A little; yes.

* * * * * *

Q. Now, Mr. Spatola, I understand that you are a member of a union. What was the name of the union?—A. Stone masons' union.

Q. And what was the number?—A. 78, where I belong.

Q. Where you belong?—A. Right.

Q. And what was it, an American Federation of Labor?—A. Yes, sir.

Q. Now, there is another stone masons' union, isn't there?—A. Plenty locals in the United States.

Q. Yes, but there is another one in Brooklyn or New York?—A. In Brooklyn; another local.

Q. What is the number of that?—A. 47.

Q. Do you know a man by the name of Mazzola?—A. Yes.

Q. How well do you know Mr. Mazzola?—A. Well, because——

Q. No, how long do you know him?—A. Since I joined the union.

106a Q. As a matter of fact, he introduced you to the union, didn't he?—A. No, he never introduced me, Mr. Mazzola.

Q. Well, he was very friendly with you, wasn't he?—A. Well, friendly like the other brothers.

Q. And he was a member of Local 78, wasn't he?—A. Right.

Q. He was a member of Local 78 until June of 1937, isn't that so?—A. I don't remember. I know he was belong to 78.

Q. He belonged to 78 and then he went out of 78—— A. Yes.

Q. — and he joined up with No. 47?—A. Right.

Q. When was that? When did he do that?—A. I don't know. I no remember.

Q. Well, it was during the time that you were working on the Cape Ann Granite job over in Weehawken, wasn't it?

The COURT. Not quite so fast.

Mr. SIMANDL. Did you understand?

A. Yes, I remember Mr. Mazzola as he go to No. 47.

Q. Yes, he went from 78 to 47.—A. Yes.

Q. Now, tell me when he changed over. Mazzola changed over from your union to 47 while you were on the job, the Cape Ann Granite job over in Weehawken, isn't that so?—A. Yes, I was working in Weehawken. At that time he change.

Q. At the time that he changed?—A. Right.

Q. And Mazzola became the business agent of No. 47?—A. Right.

Q. Didn't he?—A. Right.

Q. Now, Laudani and Rossi were members of 47, weren't they?—A. (No answer.)

107a Q. Wasn't Laudani a member of No. 47 at that time?—A. I no remember. He was belonging to 78 Mr. Rossi——I don't know what months he had transferred on 47.

Q. Well, I am asking you about Laudani, was he in 47?—A. I remember he make transfer. I don't know which month he make transfer.

Q. Wasn't Laudani always in the one union, and wasn't Rossi in the same union?—A. I know Mr. Laudani was belong to 47.

Q. 47. And Rossi belonged to 47, didn't he?—A. Yes, he belong to 47.

Q. Now, you tried to transfer from 78 into 47—— A. Yes.

Q. At the same time that Mazzola tried to transfer in there, didn't you?

* * * * *

By Mr. SIMANDL:

Q. Did you understand the question?—A. Yes, I tried to make an answer. My brother want to make a transfer and he refused me.

Q. You were refused, weren't you, by 47?—A. He refused me because——

Q. Wait a minute. Listen to me, and if you don't understand me, say so.

When Mazzola tried to transfer, you tried to transfer into 47. They permitted Mazzola to transfer, but they refused you, is that so?—A. I think—I got nothing to do with Mr. Mazzola.

Mr. STANZIALE. I object unless I know who this "they" is.

Mr. SIMANDL. The local refused——

Mr. STANZIALE. Well, who in the local?

108a The COURT. Union 47 refused Mazzola, and rejected Mr. Spatola, is that right?

The WITNESS. No, I make transfer. I want to belong to 47: and between 78 and 47 got an agreement, arrangement. I don't

know if got agreement, members of one local can't transfer to the other local.

Q. Well, Mr. Mazzola transferred. He was a member of 78, wasn't he?—A. I got nothing to do with Mr. Mazzola. He is a delegate. I am stone mason.

Q. Mr. Mazzola was a member of the union 78?—A. Right.

Q. And he transferred from 78 to 47, and they accepted him in 47, didn't they?—A. Yes, he was business agent in 47.

Q. But before he was business agent of 47, he was connected with 78, and it was not until after he became a member of 47 that he became the business agent, isn't that so?—A. Yes, he became agent for 47. I got no business with him. That is all.

Q. Wait a minute. But they did accept Mr. Mazzola's application, didn't they? They accepted Mr. Mazzola as a member of 47; they accepted his transfer from 78, didn't they?—A. Mr. Mazzola?

Q. Yes.—A. Yes.

Q. But you tried to do the same thing, didn't you?—A. No. I want to try for myself, because I no like to stay in 78. I want to go in 47.

Q. And they refused you?—A. Yes.

Q. That is all I want to find out.—A. They refused me because you can't transfer from one local to the other in the same city.

Q. Now, the next thing that happened was that Mr. Mazzola was made a delegate for No. 47, wasn't he?—A. Yes, he was delegate.

109a Q. He was the delegate on the Cape Ann Granite job up there, wasn't he? For the 47?—A. Right.

Q. And in September of 1937 Mr. Laudani ran in an election against Mr. Mazzola and beat him for delegate to the national convention, isn't that true?

Mr. STANZIALE. Objected to, if the Court please. We are not interested in the elections of the union and the delegates.

The WITNESS. It is none of my business.

The COURT. Objection overruled.

* * * * *

By Mr. SIMANDL:

Q. There was an election in September of 1937, in Local 47, for delegate, wasn't there?

Mr. STANZIALE. Just a moment, Mr. Simandl. May I have a two-minute recess? I am wanted in my office on something very important.

The COURT. All right.

(Following a short recess at this point, the trial was resumed as follows:)

Q. Now, Mr. Spatola, there was an election in September of 1937 in Local 47 for a delegate to the national convention, wasn't there?—A. That is none of my business.

Q. Maybe it isn't your business; we will find out. What I want to find out, there was such an election?—A. Yes, Mr. Laudani went to the convention.

Q. Mr Laudani went to the convention, and Mr. Mazzola did not go to the convention, isn't that so?—A. Yes.

The COURT. Were they rival candidates?

Mr. SIMANDL. Yes.

110a Q. Frank Laudani ran in an election against Mr. Mazzola and beat him, didn't he? Do you understand me?—A. Yes, I understand. I didn't belong to that local.

Q. But you remember, he beat him.—A. Yes.

Q. Then after, in December of 1937, Laudani ran against Mr. Mazzola for business agent of No. 47, isn't that so?—A. Yes, I remember.

Q. Yes, you remember that. And then Mr. Mazzola got out of No. 47, didn't he?—A. Yes.

Q. And he was pretty mad, wasn't he?—A. I don't know.

Q. You don't know.—A. I don't know. Sure he was mad.

Q. Weren't you his best friend?—A. Me?

Q. Yes, you.—A. No, sir.

Q. You, Mr. Spatola.—A. No, sir; I got no relation to Mr. Mazzola. I saw Mr. Mazzola like I saw you or the other members.

Q. You didn't support the Mazzola faction at all?—A. No.

Q. But Mr. Mazzola told you, didn't he, that if it was the last thing he did on earth he was going to get even with Frank Laudani?—A. No, Mr. Mazzola I never seen. He never came in my house. He never told me nothing.

Mr. STANZIALE. I object.

* * * * *

The COURT. I appreciate your point, but motive is pretty far reaching.

Mr. SIMANDL. Yes; and I am going into it very carefully.

The COURT. It might be well for us to lift the veil and see what is in back of all this, ladies and gentlemen of the jury.

* * * * *

111a Mr. STANZIALE. I will withdraw my objection, if your Honor please.

The COURT. Let us see what this is all about.

By Mr. SIMANDL:

Q. When did you first speak with any of the representatives or agents of the United States Government about kick-back? When was it?—A. I was sick in bed.

Q. Can you tell us when it was?—A. I no remember the day, Mister.

Q. Of what year?—A. 1938, I guess; or 1939. I no remember.

Q. It was in 1939, wasn't it?—A. 1938 or 1939; I no remember.

Q. It was after this job was finished?—A. Yes, after. One year or two years.

Q. After the Cape Ann Granite job was finished?—A. Yes.

Q. It was a long time after the Cape Ann Granite job was finished?—A. Right.

Q. And I think you spoke to this gentleman, Mr. Sarrapede?—A. Yes, he came to my house.

Q. And that was when?—A. I no remember exactly what month.

Q. You don't remember?—A. No.

Q. Well, can you tell me what year?—A. I think in 1938 or 1939.

Q. How long after you were finished on the Cape Ann Granite job?—A. It was after about a couple of years, I guess.

Q. A couple of years. Now, at that time when he came to see you, not that particular day, I mean the general time—you understand me?—A. Yes.

11za Q. You were working as a stone mason on the construction of a highway bridge being built by the National Excavation Company, weren't you?—A. Yes.

Q. You were the foreman on that job, weren't you?—A. The foreman was——

Q. There, on that job, you were foreman?—A. I was what you call the assistant foreman.

Q. I beg your pardon. I didn't mean to imply that you were the first foreman.

At that time there was a gentleman working on that job by the name of Arrigonello, was there not?—A. Arrigonello, yes. He came to me a couple of days.

Q. And do you remember, you and Mr. Mazzola, and a man by the name of Colasanti, and this gentleman [indicating]——

The COURT. Indicating Mr. Sarrapede.

Q. Came to Mr. Arrigonello and said to him——

The COURT. You are getting it pretty involved.

Q. You remember the persons that I mentioned; I mentioned to you Mazzola.—A. Mazzola.

Q. And a fellow by the name of Colasanti.—A. Colasanti was a delegate of 78.

Q. And this gentleman here [indicating]. You remember you and he going and speaking to Mr. Arrigonello.—A. Me? No. No.

Q. Now, wait a minute.—A. I never was together with these people.

Q. Wait a minute. Didn't Mazzola in your presence, while you were foreman, say, "You sign this affidavit," to Arrigonello?—A. No, sir.

113a Q. To sign this affidavit against Frank Laudani?—A. No, sir.

Q. Are you sure about that?—A. Never mentioned Mr Laudani.

Q. Didn't you tell Mr. Arrigonello two days after that——A. On the job; no.

Q. Wait a minute. That if he didn't sign that affidavit, he was through on the job that he was there working on? Now, do you understand me?—A. Yes, I understand you. I never said nothing. Mr. Arrigonello might say, I didn't tell him nothing.

Q. You didn't say that?—A. No, sir.

Q. Now, do you know Mr. Roberti; do you know Giovanni Roberti?—A. Giovanni Roberti, yes. I worked together.

Q. And didn't Roberti come to your house——A. Right.

Q. With this man [indicating]?—A. Yes.

Q. And didn't you tell Roberti to sign that affidavit?—A. No; Mr. Roberti came in my house. I don't know if Mr. Roberti sign or no sign. I never told nobody nothing.

Q. Isn't it a fact that Mr. Roberti, two days before he came to your house, had given this man a statement in which he said, "I did not receive any kick-back," and wasn't it two days later that this man, Mr. Sarrapede, brought him to your house; and wasn't it there that Roberti signed an affidavit with respect to the kick-back?—A. The first time he came——

Q. Wait a minute; wasn't it in your house that he signed that affidavit with this gentleman, Mr. Sarrapede, two days after he had already said that he did not get a kick-back? Wasn't it signed in your house?—A. Yes, he signed it; well, I think he signed, but Mr. Roberti in my house——

Q. In your house?—A. I was sick in bed. You can ask——

114a Mr. STANZIALE. Let him finish his answer.

Q. Now, as a matter of fact, before Roberti came to your house that day with this gentleman, didn't you, the day before, call him on the telephone and tell him that if he did not sign that affidavit he was through?—A. No, sir; I call nobody.

Q. Wasn't that the reason why the agent brought Mr. Roberti to your house?—A. No, no. He came another apartment first all alone, and then after a couple of days, because I was sick, he came with Mr. Roberti.

Q. Is this your signature [handing to witness]?—A. Yes.

Mr. SIMANDL. I ask that the paper be marked for identification.

I will show it to you in a minute.

Mr. STANZIALE. Very well.

(The paper referred to was marked "Exhibit D-1" for identification.)

Mr. SIMANDL. Do you know what you signed there?

The WITNESS. I can't read.

The COURT. Is it in English or Italian?

Mr. SIMANDL. It is in English.

By Mr. SIMANDL:

Q. In whose presence did you sign that paper?—A. That paper signed in my house.

Q. I say, in whose presence did you sign this paper, this one here [showing to witness].—A. Yes, that is my sign.

Q. That is your signature?—A. Yes.

Q. Do you know the date? Can you see the date?—A. No.

115a Q. Are you sure you can't read the date?—What date is that?

Mr. STANZIALE. Suppose you tell us, Mr. Simandl.

A. 23rd of February.

Q. What year?—A. 1942.

Q. This year, the 23rd of February 1942, is that right?—A. Yes.

Q. You signed this paper?—A. Yes, sure.

Q. And in that paper did you not state that you never were forced by threats of dismissal or bodily harm to make payments of part of your salary to anyone; that you received your wages on the job at the union scale; and that any payments that the deponent made have been made voluntarily and not by force?—A. What means "voluntarily and not by force"?

(The interpreter interpreted the question.)

A. (Through the interpreter.) I signed that paper, and I said that I was giving that money back voluntarily because I didn't want to lose my job, my work.

Q. Now, you knew what you were signing, didn't you?—A. I sign I give money voluntarily.

Q. Now, when you signed this paper didn't you tell Frank Laudani that this prosecution was all cooked up by Mr. Mazzola and Mr. Roberti?—A. I just, my imagination, I can't prove.

Q. Did you say that, Mr. Spatola?—A. I say Mr. Roberti might do this job with Mr. Mazzola. I can't prove if Mr. Mazzola did.

Q. You can't prove it. But you said that this prosecution against Laudani was cooked up by Mr. Roberti and Mr. Mazzola.

Didn't you tell that to Frank only a couple of weeks ago?—A. Yes, sir; I figure Mr. Mazzola send me Mr. Roberti in my house. I can't prove.

Mr. SIMANDL. That will be all.

116a Redirect examination by Mr. STANZIALE:

Mr. STANZIALE. Suppose, Mr. Interpreter, you interpret for him.

(Through the interpreter:)

Q. So that, I understand that on February 23, 1942, Mr. Laudani was over to see you?—A. I went to the union office on Washington Day.

Q. Who told you to go to the union office?—A. Mr. Laudani called me up at home on the telephone and he told me to be there.

Q. And in pursuance to the telephone call that you got from Laudani you went to union headquarters?—A. Yes, I went there.

Q. You know what position Mr. Laudani holds in the union today?—A. He is a president of Local 47.

Q. And you went from your home to Local 47. Who asked you to sign the statement?—A. To the central office, in New York, I went.

Q. Was Mr. Laudani there?—A. (In English) I waited; then after, he came.

(Through the interpreter) He wasn't there, and after a while, he came.

(In English) He came with another two fellow.

Q. Can you tell me the names of the two fellows he came with?—A. I remember one, Viaggio. (In English) Matteo Viaggio was one; and I no know the name of the other one.

Q. When you spoke to Mr. Laudani, was Viaggio and this other man present?—A. Yes, sir; they were there.

Q. Who asked you to sign the statement on February 23, 1942?—A. Mr. Laudani told me to do so.

Q. And who transcribed or who typed that statement of February 23, 1942?—A. I don't know the person; but it was one with Mr. Laudani.

117a Q. Now, Mr. Spatola, on the 14th day of January 1939 you made a statement in this case to agents Stephen S. Sarrapede and the gentleman to my left, did you not?—A. I don't remember the exact day, but I know I signed the paper for that gentleman there [indicating].

Q. And again on the 6th of February 1939 you signed a statement for Mr. Sarrapede and Agent Morris Fitzgerald, did you not?—A. Yes, I did.

Q. I show you a statement bearing the date of the 14th of January 1939, and ask you if you recognize the name of Sante Spatola [handing to witness].—A. Yes; that is my signature.

Q. And I show you a statement dated the 6th of February 1939 and ask you if the signature of Sante Spatola is your signature?—A. Yes, sir.

Q. Now, when you signed these statements on the 14th of January 1939, and the statement on the 6th of February 1939, were those two statements voluntarily given to Mr. Sarrapede and Agent Fitzgerald without any promises or any threats?

Mr. SIMANDL. He is impeaching his own witness. I don't understand it.

If this Court please he has no right to go into this. There is no question brought out about any statements that were made.

The COURT. Your objection is that this is not rebuttal?

Mr. SIMANDL. Not only not rebuttal, but he can't impeach his own witness.

Mr. STANZIALE. I am not impeaching this witness. There has been presented a statement purportedly made on February 23rd, your Honor, 1942; and under those circumstances, I have a right, if your Honor please, to examine this witness to show——

118a The COURT. You can examine him about that; but I doubt very much that you have a right——

Mr. STANZIALE. I am not going into the statement. I am asking him whether these statements were made.

The COURT. Be very careful that you don't put yourself in the position of impeaching this witness.

All right. Go ahead.

By Mr. STANZIALE:

Q. Did you voluntarily make these statements to Agent Sarrapede and——

Mr. SIMANDL. May I have an exception noted?

The COURT. I will overrule the objection, but I won't let you go any further.

Mr. STANZIALE. I won't go any further.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Q. When you went to see Mr. Laudani, were you alone or were you accompanied by anyone?—A. I was all alone.

Q. And with you, at the time, was Mr. Laudani, Matteo Viaggio, and this other unidentified man?—A. Yes, sir.

Mr. STANZIALE. That is all.

Mr. SIMANDL. No questions.

ANTONIO SIGGIA, called and sworn on behalf of the Government, testified as follows:

Mr. SIMANDL. Now, if the Court please, we are not trying the indictment involving this man.

The COURT. No.

119a Mr. STANZIALE. This is part of the general allegation, as I told your Honor. I am not restricted to the counts of the indictment. I can bring in other witnesses, if the Court please.

Mr. SIMANDL. We will see if you can. We are not going to cross that bridge until we come to it.

Direct examination by Mr. STANZIALE:

Q. Mr. Siggia, what is your occupation?—A. Stone mason by trade.

Q. How long have you been a stone mason?—A. All my life, sir.

Q. Were you a stone mason in Italy?—A. Yes, sir.

Q. How long are you in this country?—A. I came in this country 1913, November 3rd.

Q. What part of Italy?—A. Sicily.

Q. From Sicily?—A. Yes, sir.

Q. Do you belong to any union?—A. Yes, sir.

Q. In 1937 what union did you belong to?—A. 78; Local 78, New York.

Q. Now, in the month of September, 1937, were you employed to do any work on the Lincoln Tunnel?—A. Yes, sir.

Q. Who employed you?—A. Mr. Frank Laudani.

Q. Do you know Mr. Laudani?—A. Not before.

Q. Do you see him in court today?—A. Yes, sir.

Q. Will you point him out?—A. He is over there, sir (indicating).

Q. All right. Do you know Alfredo Rossi?—A. I know Mr. Alfredo Rossi by name, yes.

Q. Do you see him in court?—A. Yes, sir.

Mr. STANZIALE. I presume that he points to the two defendants.

120a Q. Now, on what side of this tunnel or project were you working, on the New York or New Jersey side?—A. In New Jersey.

Q. Who hired you?—A. Mr. Laudani.

Q. And that was at the end of September, 1937?—A. Yes, sir.

Q. For how long a period did you work there, Mr. Siggia?—A. About five weeks.

Q. That's all?—A. That's all—well, and then I was laid off.

Q. And then you went back to work?—A. I went back to working later.

Q. You went back to work later?—A. Yes.

Q. Can you tell us how long you were laid off after the five weeks.—A. Well, I don't know exactly, say about four weeks.

Q. Then you went back?—A. Yes, sir.

Q. You went back in about the month of December 1937?—A. I guess so.

Q. Under what circumstances were you laid off?—A. Well, I was told they didn't need me any more.

Q. Who told you that?—A. Mr. Laudani.

Q. Now, during the first five weeks that you worked there did you give up any part of your money to anybody?—A. No, sir.

Mr. SIMANDL. I object, if the Court please.

* * * * * *

JOSEPH FAILLACE, being duly sworn, testified on behalf of the Government, as follows:

Direct examination by Mr. STANZIALE:

Q. Mr. Faillace, where do you live?—A. 143 Lexington Avenue, Clifton.

121a Q. And what is your occupation?—A. Stone cutter and tool sharpener.

Q. How long have you been a stone cutter and tool sharpener?—A. Well, for the last, say 42 years.

Q. Were you born in this country?—A. No, sir.

Q. Born in Italy?—A. Yes, sir.

Q. How old were you when you came here?—A. Six and a half.

Q. You learned the trade here?—A. Yes, sir.

Q. Now, during the month of August 1937 to December 1937, where were you employed?—A. Lincoln Tunnel.

Q. Were you working for the Cape Ann Granite Company?—A. Yes, sir.

Q. What work were you doing?—A. Cutting stone.

Q. Now, on what side of the project were you working, the New York side or the New Jersey side?—A. New Jersey.

Q. From whom did you obtain this employment?—A. Frank Laudani.

Q. Did you know Frank Laudani?—A. Yes, sir.

Q. Do you see Laudani in court?—A. Yes, sir.

Q. Will you point him out?—A. [The witness indicated.]

Q. Do you know Alfredo Rossi?—A. Yes, sir.

Q. Will you point him out?—A. [The witness indicated.]

Q. Now, will you tell us what you did in the early part of August of 1937 when you were seeking employment on this job?—A. Well, I went down there to look for work, and when I went

there he says, "Do you belong to the union?" And I said, "I belong to one union, but I don't belong to your union."

Q. When you say "he," whom do you mean?—A. Frank Laudani.

Q. What did he tell you?—A. He says, "If you will join the masons' union I will give you a job."

I asked him, "Is it any different which one I join?"

He says, "No, your union."

122a By the COURT:

Q. What was your work?—A. Stone cutter.

By Mr. STANZIALE:

Q. Did you join the union?—A. Oh, yes.

Q. And were you put to work three or four days after?—A. Yes.

Q. Who put you to work?—A. Frank Laudani.

The COURT. Do you mind asking him what kind of work: "Did you cut stone there?"

The WITNESS. Cut stone.

Q. Trimming it up for the masons?—A. Yes, cutting the stone for the masons.

Q. What was your pay?—A. 13.30.

Q. What happened to you while you were working on the job?—A. I started to work there twelve o'clock. They approached me and he says—Mr. Pedevillano approached me and he says——

The COURT. No.

Mr. SIMANDL. Wait a minute. Who approached you?

The WITNESS. Pedevillano.

Mr. SIMANDL. I object to any conversation that Mr. Pedevillano had out of the presence of Mr. Laudani. He is not named in any of these indictments.

The COURT. Objection sustained.

Will you ask him, as a result of this conversation what was done?

123a Q. After you had this conversation with Mr. Pedevillano, what did you do?—A. I continued working.

Q. What were you supposed to do?—A. Well, I was supposed—he asked me if I would pay——

Mr. SIMANDL. I object. I suppose he is talking of Mr. Pedevillano.

Are you, Mr. Witness? When you say "he asked me" you are asking of Pedevillano, aren't you?

The Witness. Yes, sir.

Mr. SIMANDL. I object to it and ask that it be stricken.

By the COURT:

Q. Was Mr. Rossi there when you had that talk?—A. Nobody was there.

Q. Was Mr. Laundani there?—A. No, sir.

The COURT. Then, of course, you would not press that question.

By Mr. STANZIALE:

Q. Was there a discussion with Mr. Pedevillano, and answer this question yes or no, in relation to your pay?—A. Yes.

Mr. SIMANDL. I object, if the Court please.

The COURT. Objection overruled. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. There was a discussion as to your wages, is that correct?—A. Yes, sir.

124a The COURT. Your objection goes to this whole line of questioning.

Mr. SIMANDL. And an exception also.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. As a result of the conversation that you had with Rocco Pedevillano, what if anything did you do with your wages when you received them?—A. When I received my wages I gave him 30 cents an hour back.

Q. To whom?—A. To Pedevillano.

Mr. SIMANDL. I object, if the Court please, and I move to have it stricken out as not binding on this defendant, and brought into the record by indirection and not direct conversation.

The COURT. So far that does not involve your client. Now, what bearing it may have later on will be problematical depending on what the facts are.

Q. Did Mr. Pedevillano tell you who this money was for?

Mr. SIMANDL. I object.

The COURT. Objection sustained.

Mr. STANZIALE. All right.

By Mr. STANZIALE.

Q. Now, let me ask you this: When did you pay this 30 cents an hour?—A. I paid every Monday, and Tuesday in the morning.

Q. After you received your wages?—A. After I received my wages.

125a Q. Now, who, other than Rocco Pedevillano, did you give part of your salary to?—A. I gave it to Mr. Frank Laudani.

The COURT. You gave it to who?

Mr. STANZIALE. Frank Laudani, the defendant in this case.

Q. Is that the man that you recognized here in court today?—A. Yes, sir.

Q. Where did you pay this money?—A. In the office.

Q. Where is this office located in relation to where you were working?—A. Well, it it about three blocks away from where we were working on the main street.

Q. What kind of an office was it?—A. It was a small office there.

Q. Now, tell us what you did the first time you paid Mr. Laudani, what he said to you?—A. I just brought it in there and walked out.

Q. Was Mr. Laudani there with anybody?—A. Nobody.

Q. He was alone?—A. All alone.

Q. Now you had taken this money from your pay?—A. Yes, sir.

Q. And when you gave him, Mr. Laudani, the money, was it in cash or in check?—A. Cash money.

Q. And did you actually hand it to Mr. Laudani?—A. Yes, sir.

Q. Did Mr. Laudani have anything before him?—A. I could not tell you.

Q. You don't remember?—A. You mean on the table? Well, he always had—there is very different things and books.

Q. Did you get a receipt for the money?—A. No, sir.

Q. Did Mr. Laudani offer to give you a receipt for the money?—A. No, sir.

126a Q. How many times, Mr. Faillace, during the period that you worked from August 1937 to December 1937 did you give money to Frank Laudani?—A. Well, maybe about seven or eight times.

Q. Oh, seven or eight times. Now, when you gave him this money, to Frank Laudani, what if anything did he do with it?—A. Well, he must have put it in his pocket.

Q. Well, did you see him put it in his pocket?—A. No, sir. I just handed it over and walked out.

By the COURT:

Q. Where did you put it?—A. Right on the table.

By Mr. STANZIALE:

Q. What if anything did you say when you brought the money into the shanty and put it on the table in the presence of Frank Laudani?—A. I didn't say a word.

Q. Did he say anything to you?—A. Not a word.

The COURT. Mr. Stanziale, will you ask him about the first time, how he came to go to Mr. Laudani and what, if anything, was said the first time?

Q. Now, Mr. Faillace, under what circumstances did you go to Mr. Laudani and bring him the money?

Mr. SIMANDL. Now, I am going to object to any conversation, or conversations that were had with Pedevillano or somebody else, out of the presence of Mr. Laudani.

The COURT. Yes, don't tell us. Ask him, Mr. Stanziale, not to tell us the conversation that he had with Mr. Pedevillano. When he went to Mr. Pedevillano's office, what was said and done there the first time?

127a By Mr. STANZIALE:

Q. How did it happen you went to Laudani?—A. Before I got the job?

Q. Yes. Did Laudani designate to you what you had to do to get the job?—A. Well, I had to join the union.

Q. Was there anything said other than that?—A. No, sir.

Q. However, you got the job; and you say you brought money to Mr. Laudani as part of your kick-back from your salary. How did it happen——

Mr. SIMANDL. Wait a minute. He didn't say anything of the kind. He said that he gave a certain percentage of money. I object to the characterizations of the question by the District Attorney, and I ask him to withdraw it.

The COURT. Reframe it.

By Mr. STANZIALE:

Q. Can you tell us how you happened to go to pay Mr. Laudani this money the first time?—A. Well, that will be the same thing as before. I was told—I was asked——

The COURT. Don't go further than that.

Q. You were told?—A. I was asked.

Q. Who asked you? I am not asking for conversation.

The COURT. Wait a minute. You are very close to the hole in the ice.

Mr. STANZIALE. I am very close, but that is as close as I am going.

Q. Who asked you to give the money to Laudani?

128a Mr. SIMANDL. I object.

The COURT. Objection sustained.

Wait a minute. You would have gone through the hole.

Q. You had a conversation with somebody, and you went to Laudani?—A. That is right.

Q. Now, can you tell us, as best you can remember or say, when you went to Laudani the first time; what you said to him when you brought the money to him, and what if anything he said to you, or why you went to him? What did you tell Mr. Laudani?—A. Nothing at all. I just put the money on the table and kept quiet and I walked right out.

Q. In other words, it was understood——

Mr. SIMANDL. I object to that.

The COURT. He walked out.

Q. Let me put it this way:

When you saw Laudani, and you were in his presence, and you deposited the money on the table, was there anything by the actions of what Mr. Laudani did that it was understood that the money was being brought to him?

Mr. SIMANDL. I object, if the Court please.

The COURT. Objection sustained.

You can argue that to the jury and they will draw that conclusion as they see fit, from all the testimony.

By Mr. STANZIALE:

Q. Now, did you at any time during the period of your employment give any money to Alfredo Rossi?—A. Yes, sir.

129a Q. How many times would you say?—A. About two or three times.

Q. Now, where did you give Mr. Alfredo Rossi any money?—A. Outside.

Q. Outside of what?—A. On the job.

Q. Where were you working?—A. Well, probably sometimes while I was working, or twelve o'clock.

Q. Now, let me ask you this: What if anything did you say to Alfredo Rossi when you brought him the money; and what if anything did Alfredo Rossi say to you?

Mr. SIMANDL. That is objected to on behalf of Laudani. That is our understanding.

The COURT. Objection sustained.

The WITNESS. I just handed him the money. I says, "This is for Frank."

The COURT. This is for what?

The WITNESS. "This is for Frank."

The COURT. "This is for Frank," meaning who?

The WITNESS. Laudani.

By Mr. STANZIALE:

Q. In other words, you said to Rossi that this money was for Frank, is that right?—A. That is right.

Q. What did Rossi say to you when you said, "This is for Frank"?—A. He didn't say nothing.

Q. Did you see what he did with the money?—A. No, sir. Just put it in his pocket.

Q. And you say that during the period of employment, from August to September 1937, that you brought money to Alfredo Rossi on two or three occasions?—A. That is right.

Q. Now, how much of your salary did you deduct?—A. 30 cents an hour.

130a Q. And you were getting at that time how much?—A. $13.30

Q. That is $1.88 per hour?

The COURT. Do you mind asking him what position in the union he had at that time? You don't have to ask that if you don't want to, because Mr. Simandl will; but right now it is in my mind.

Q. Can you tell us what position Mr. Laudani held in the union at that time?—A. He was president of the union.

Q. In which you belonged?—A. 47.

Q. Can you tell us, Mr. Faillace, under what circumstances you happened to give the money to Alfredo Rossi on two or three occasions?—A. It was nobody else was around, and so I hand it over to him. He was taking care of the section.

Mr. SIMANDL. I object.

He was taking care of what?

The WITNESS. He was Section Foreman. In different little places there was a section foreman there.

The COURT. Do you withdraw your objection?

Mr. SIMANDL. Yes.

Mr. STANZIALE. Cross examine.

The COURT. We will resume with the cross examination tomorrow morning at ten o'clock.

(Adjourned to Tuesday, March 10, 1942.)

NEWARK, N. J.
Tuesday, March 10, 1942

(Trial resumed pursuant to adjournment.)

(Counsel present as before stated.)

131a *Colloquy*

JOSEPH FAILLACE, resumed the stand.

Mr. STANZIALE. If your Honor please, I believe I concluded at four o'clock yesterday; I had finished my direct examination of this witness.

The COURT. All right.

Mr. SIMANDL. Before I proceed with the cross-examination, if the Court please, may I ask the Court to compel the Government to elect on what dates of indictment 11-C, which is the indictment wherein the witness Joseph Faillace is mentioned, the Government intends to reply upon to substantiate or prove the facts alleged in that indictment, so that I may intelligently cross-examine this witness.

* * * * *

The COURT. Are your remarks in the form of a motion?

Mr. SIMANDL. Yes, if the Court please, my remarks are in the form of a motion.

* * * * *

The COURT. The District Attorney might have coupled up with this witness' testimony the entries in the payroll book, and that might have supplied the dates. You hardly expect the witness now to remember the exact dates that he paid these various sums. When he paid that, he was not keeping account of it. The payroll books are here to indicate certain dates.

I think the witness' testimony can very well be supplemented by reference to the payroll books, because they are in evidence and they can show us the exact date when he paid these various sums of money, if he paid them in the way in which he says he paid them. If he kept account, then it would be different,
132a but just to pay these various sums on his respective pay days would not leave any mark on his memory as to the dates.

Mr. SIMANDL. He didn't say he paid him on his pay day.

The COURT. He said, when he got paid.

Mr. SIMANDL. No.

The COURT. That is what I understood.

The WITNESS. I either made them on a Monday or a Tuesday.

The COURT. When did you get paid?

The WITNESS. We got paid on a Friday.

The COURT. Out of your week's wages?

The WITNESS. Yes, each week we got paid on a Friday, and on Monday or Tuesday I paid in.

The COURT. You did that each week?

The WITNESS. Yes, sir: the following Monday or Tuesday.

The COURT. Following the Friday you got paid?

The WITNESS. Yes, sir.

The COURT. That is the same thing. I overrule the motion and give you an exception.

Mr. SIMANDL. I made a motion that the Government be compelled to elect which dates, named in Indictment 11-C, which is the indictment this witness is named in, the Government intends to rely upon. Your Honor, as I understand it, overrules my motion.

The COURT. Yes.

Mr. SIMANDL. May I respectfully pray an exception?

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

133a The Court. We will leave that up to both sides to argue that out. You may cross examine.

Mr. Simandl. No questions.

Alfio Tomasello, being duly sworn on behalf of the Government, testified as follows:

Direct examination by Mr. Stanziale:

Q. Mr. Tomasello, what is your occupation?—A. Mason.

Q. What kind of mason are you?—A. Mason, stone cutter, and stone setter.

Q. How long have you been in that business?—A. Well, I have been about, when I got on the other side too; when I got 15 or 16 years old.

Q. How long have you been in this country, Mr. Tomasello?—A. 1907 I came.

Q. Now, in 1936 or 1937, did you belong to any Local?—A. Oh, yes.

Q. What number?—A. The first time, I belong New York; and after, Trenton.

Q. Well, in 1936 or 1937 what local did you belong to?—A. I belong to New York Local.

Q. Do you remember the number?—A. 78.

Q. Now, during the period of January 1937, were you working for the Cape Ann Granite Company?—A. Yes, sir.

Q. And where was this work at?—A. On the Lincoln Tunnel.

Q. And who hired you?—A. Mr. Laudani.

Q. Do you know Mr. Laudani?—A. Yes, sir.

Q. Do you see Mr. Laudani in court?—A. Yes, sir.

Q. Point him out.—A. Yes, sir [indicating].

134a Q. Do you know Alfredo Rossi?—A. Alfredo Rossi I know on the tunnel.

Q. Do you see him in court?—A. Yes, sir.

Q. You went to work there in the month of January 1937, I believe, you said?—A. Yes, sir.

Q. Over how long a period did you work there, Mr. Tomasello?—A. I no remember. I work for Brewster first, and after that change to——

Q. Cape Ann Granite?—A. Yes, sir.

Q. Now, you worked for the Cape Ann Granite Company. In the month of January 1937 you started to work for them?—A. Yes, sir.

Q. Is that the time you got the job from Mr. Laudani?—A. Yes, sir.

Q. Now, from that time, from January up to when did you work?—A. Well, I remember. I don't know if November or December.

Q. Of the same year?—A. Yes, sir.

Q. Now, what was the rate of pay?—A. $12.

Q. $1.50 an hour. Before you started to work, what did you say to Mr. Laudani, and what did he say to you?—A. I ask how much for each hour. He say, if I want to work a day, I pay that much, be 25 cents an hour.

Q. You have to pay 25 cents an hour?—A. Yes.

Q. What did you say?—A. Well, I got a family to support. Everybody——

Mr. SIMANDL. I object to that. If the Court please, I object to what his reasons are. What did he say?

Q. What did you say when Frank Laudani says you got to pay 25 cents an hour?—A. I working.

Q. And what else did you say to him?—A. Nothing. What got to say? I work, because I got a family. Everybody work——

135a Mr. SIMANDL. I ask that that be stricken, if the Court please.

The COURT. That may be stricken.

By the COURT:

Q. Did you say you had a family? Did you tell him that?—A. Oh, yes.

The COURT. He is telling the conversation; that would be all right.

By Mr. STANZIALE:

Q. After you told Laudani that, did you start to work?—A. Oh, yes.

Q. Now, when you got your pay at the rate of $1.50 an hour, what if anything did you do with this money? A. What do you mean?

Q. When you got paid your check or your money for your wages, what did you do with his part of that money?—A. I take it home.

Q. Yes?—A. I paid Mr. Rossi.

Q. Mr. Rossi?—A. Yes, sir.

Q. Now, how did it happen that you paid Mr. Rossi? Did anybody tell you to pay him?

Mr. SIMANDL. I object to that, if the Court please.

The COURT. Objection sustained.

Q. How did it happen that you paid Mr. Rossi?—A. Because the boss, he say you got to pay.

By Mr. STANZIALE:

Q. Tell us, Mr. Tomasello, you said that you paid Mr. Rossi?—A. Yes, sir.

136a Q. Now, why is it or how is it that you paid Mr. Rossi?—A. On back of the shanty.

Q. Who told you to pay Mr. Rossi?—A. Mr. Laudani.

Q. Mr. Laudani?—A. Yes, sir.

Q. What did Mr. Laudani say to you about making the payment? Tell us in your own words.—A. "25 cents an hour," he says.

Q. Yes?—A. "You got to give it to Mr. Rossi in the back of the shanty." I give it every time.

Q. Did he tell you why you had to pay Mr. Rossi and not to him?—A. Well, I don't know; because he is so busy on the——

Q. Did Laudani say he was busy and that you had to pay Mr. Rossi?—A. Yes, sir.

Q. Now, what did he say to you about that, about making the payments? What did Mr. Laudani say to you about that?—A. What did he say about the payment?

Q. What did Laudani say why you had to pay Mr. Rossi?—A. Well, he said to me, "You got to pay that much" or I no keep the job.

Q. Did he say to you why you had to pay Rossi and not him?—A. He say, "You got to pay Rossi." I don't know what he do after with that money. If you got interpreter, better.

Mr. STANZIALE. The interpreter will be here later.

Q. Listen to me. I will try to make it as easy as possible. Did Mr. Laudani tell you why you should pay Mr. Rossi and not him? Why did he say you should pay Mr. Rossi?—A. He say, "Pay Mr. Rossi," because Laudani cannot tend to everybody.

Q. He cannot tend to everybody?—A. No.

Q. And did you continue to make those payments every week?—A. Yes, sir.

147a Q. And who did you make those payments to?—A. The first time—I pay to Mr. Rossi all the time.

Q. Yes, the first time.—A. And after I went back again, reduce the time and make more wages. You see, raise the wages. Mr. Rossi—a few times I pay Mr. Laudani.

Q. Do you know the time that the wages went up to $1.88?—A. I no remember. Sometime in June.

Q. Now, did anybody tell you what you had to pay when you got your raise?—A. Who told me?

Q. Who told you?—A. Joe Tamburello.

Mr. SIMANDL. I move to have that stricken out.

The Court. We won't strike out who told him; but we won't let him say what was told.

Q. You spoke to Joe Taniburello, is that right?—A. Yes.

Q. Now, as a result of having talked to Joe Tamburello, how much money did you pay per hour after that?—A. 35 cents——

Mr. Simandl. Wait a minute, now. There is not anything in the testimony that warrants an unwarranted conclusion of the District Attorney.

He can say: What did you do after you had your conversation; but he can't say as a result of that conversation, because there is nothing that the witness has testified to.

By Mr. Stanziale:

Q. After you spoke to Tomasello, how much did you pay?—A. 35 cents an hour.

Q. Now, who did you give this 35 cents an hour to?—A. Mr. Rossi.

Q. Did you pay Mr. Laudani any time after the 35?—A. I don't remember, four or five times.

138a Q. Where did you pay Mr. Laudani?—A. In the office.

Q. What office?—A. In the Lincoln Tunnel office.

Q. Who was there?—A. Nobody.

Q. Just you and Laudani?—A. Yes, sir.

Q. When you went into the office, what did you say to Mr. Laudani?—A. I say, "Here is my money." That's all.

Q. And what did Laudani say to you?—A. He say—put it in pocket, that's all. He took it, money, and put it in pocket.

Q. Did Mr. Laudani give you a receipt for this money?—A. No.

Q. When you were getting $1.50 an hour, and you paid 25 cents an hour kick-back on your wages——

Mr. Stanziale: What do you call it, Mr. Simandl; a gratuity?

Mr. Simandl. If the Court please, I am addressing myself to the Court. I think if we just keep right on addressing ourselves to the Court, we won't get into a scrap. I prefer to ask your Honor to rule.

The Court. That is not a bad idea.

Reframe your question, Mr. Stanziale.

By Mr. Stanziale:

Q. When you were giving back 25 cents an hour, and you say you paid mostly to Mr. Rossi, and seven or eight times, I believe you said, to Mr. Laudani——A. Yes, sir.

Q. Where did you pay Mr. Laudani?—A. In the office, I said. In the same place.

Q. Now, when you were paying 25 cents on your wages per hour, and you paid Mr. Rossi as you testified, where did you pay Mr. Rossi?—A. On the back of the shanty.

139a Q. In back of the shanty?—A. Yes, sir.

Q. Now, did Mr. Rossi ever give you a receipt?—A. No, sir.

Q. When you were paying 35 cents an hour, and you said that you paid Mr. Rossi, where did you pay Mr. Rossi?—A. In the same place. Once in a while in back shack, and once in a while walk outside and just——

Q. Did Mr. Rossi give you any receipt?—A. No, sir.

Q. And you did this for every week that you were employed by the Cape Ann Granite Company?—A. Yes, sir.

Mr. STANZIALE. You may cross-examine.

Cross-examination by Mr. SIMANDL:

Q. You know Mr. Mazzola?—A. I know Mr. Mazzola a long time, when I belong to Local. At that time, no belong to Local.

Q. Why, you know him since you got into America, don't you? The first time you got here you met Mr. Mazzola?—A. Yes, sir.

Q. And you were a member of that Local, Mr. Mazzola's Local, weren't you?—A. Well, he belong before my Local; and then after he change the Local.

Q. Then he changed the Local and you didn't, that's right isn't it?—A. He may be——

Q. You didn't change your Local. You went to Trenton?—A. No, no. I join in Trenton.

Q. Then you went to 78?—A. Yes, sir.

Q. And Mazzola was in that union?—A. Yes, sir.

Q. And then he went from 78 into 47?—A. 78; no, 47. I went to Local 29 in Union City.

Q. You went to Union City?—A. Yes; because I live in Jersey City.

Q. Now, as a matter of fact, you and Tomasello were very, very friendly, weren't you? I don't mean Tomasello, I mean Mazzola; you and Mr. Mazzola were very friendly, were you?—A. No.

140a

Q. They weren't friends with you?—A. No, sir.

The COURT. Now you are saying "friends." "Friendly" and "friends" have different meanings.

By Mr. SIMANDL:

Q. Who was with you when you signed the statement for this man [indicating]?—A. Just came that man.

Q. Who was with you?—A. Another fellow, I don't know.

Q. Mr. Mazzola was there, wasn't he?—A. No, sir.

Q. Didn't Mr. Mazzola bring this gentleman to you?—A. No, sir.

Q. Did Mr. Mazzola speak about the matter to you?—A. No, sir.

Q. You are sure of that?—A. Never, because I go no more.

Mr. SIMANDL. That is all.

GIUSEPPI CAMPO, being duly sworn on behalf of the Government, testified as follows:

Direct examination by Mr. STANZIALE:

Q. Can you speak English?—A. Just a little bit.

Q. Well, we will try to get along. Mr. Campo, you pay attention to me when I talk to you, and if you don't understand, say so.—A. Yes.

Q. What business are you in?—A. Stone mason.

Q. How long have you been a stone mason?—A. About 15 or 16 years here.

141a Q. Were you a stone mason in Italy?—A. On the other side too.

Q. What part of Italy do you come from?—A. Sicily.

Q. How long have you been in this country?—A. Twenty-one years.

Q. Do you have a family here?—A. Yes.

Q. Mr. Campo, did you in the early part of September 1937 to February 1938, did you work for the Cape Ann Granite Company?—A. I don't know the company.

Q. Did you work on the Lincoln Tunnel?—A. Yes, sir.

Q. What kind of work were you doing there?—A. Stone mason.

Q. Who hired you for this job?—A. Well, he gave me job, Mr. Laudani.

Q. Do you know Frank Laudani?—A. Yes.

Q. Do you see him in court?—A. Yes.

Q. Is that the man you know as Frank Laudani?—A. Yes [indicating].

Q. Do you know Mr. Alfredo Rossi?—A. Yes.

Q. Do you see Mr. Rossi in court?—A. Yes.

Q. Is that the man you recognize as Alfredo Rossi [indicating]?—A. Yes.

Q. Now, I believe you testified that you started to work in September 1937. Do you remember when you started to work? A. No——

Q. Do you remember when you started to work on this job, whether anybody talked——A. No; nobody talk in the day.

Q. What happened when you were working on this job?—A. (The witness speaks in Italian.)

* * * * * *

By Mr. STANZIALE:

Q. What is the name of this man?—A. Well, before—I no remember. One now I remember, Mr. Spatola.

142a Q. Mr. Spatola. And then what happened?—A. Well, he tell me——

Mr. SIMANDL. Wait a minute. I object to any thing Mr. Spatola told him.

* * * * * * *

The COURT. He had a talk with Mr. Spatola, and then after that, what did he do?

By Mr. STANZIALE:

Q. Now, you testified that the day after you went to work you had a talk with Mr. Spatola?—A. Mr. Spatola.

Q. Now, don't tell us what Mr. Spatola said. After you talked with Mr. Spatola, what did you do with your pay that you got?—A. 30 cents an hour got to pay, that's all.

Q. Pay to whom?—A. Well, I no remember. That when I got salary, you know.

I remember after I pay a mason and he go away. On another place I pay for Rossi. One time I pay Mr. Laudani and nobody know.

Q. Nobody know?—A. Nobody know; yes, sir. I give it in office one time, nobody see.

Q. Nobody see?—A. Same thing.

The COURT. Do you understand him, Mr. Simandl?

Mr. SIMADL. I think I do. He says at one time he paid Laudani and nobody saw. At some other time he paid Rossi; and at other times he paid a man he does not know, who went away.

By Mr. STANZIALE:

Q. Now, let me ask you this: You paid 30 cents an hour. Is that right?—A. Yes.

143a Q. Now when you paid Alfredo Rossi, where did you pay him this money?—A. On the job.

Q. Where on the job did you pay him?—A. Well, it was in the well, nobody know.

Q. You got near a wall together?—A. Yes.

Q. And you gave the money?—A. Yes.

Q. And when you gave him the money, what did Rossi do with the money?—A. I never know.

Q. Now, can you tell us where this wall was that you made these payments?—A. Oh, no. One time here, and another time another place.

By the COURT:

Q. You mean where you were working?—A. Yes.

Q. I think we got the wrong impression. The wall where you were at the job?—A. Yes.

By Mr. STANZIALE:

Q. Did Mr. Rossi give you a receipt for the money?—A. No.

Q. Now, when you paid Mr. Laudani, where did you pay him?—A. It was in office. You go in office and nobody was in office, and I go like that [indicating] and I walk away. Me talk for him, he reading.

Mr. SIMANDL. What was that?

The COURT. A confidential conversation.

The WITNESS. Nobody in office, nobody in office.

Q. Who said nobody knows?—A. Nobody see.

Q. Did you make these payments every week from the time you were on that job?—A. Yes.

Mr. STANZIALE. That is all.

The COURT. Have you bracketed as to when he went to work and when he quit?

144a Mr. STANZIALE. Yes; he testified from September 1937 to February 1938.

The COURT. All right.

Mr. SIMANDL. No questions, sir.

The COURT. Cross examination waived. Do you have any further questions, Mr. Stanziale?

Mr. STANZIALE. No; I have no further questions.

GAETANO DE CESARE, being duly sworn, testified for the Government as follows:

Direct examination by Mr. STANZIALE:

Q. Mr. DeCesare, you are one of the defendants who has been indicted in case No. 9-C with Frank Laudani, and Alfredo Rossi, Matteo Viaggio, and Gaetano DeCesare?—A. That is right.

Q. You are a defendant, and you have also been indicted—

Mr. SIMANDL. I object, if the Court please. I don't know that the District Attorney has a right to do this.

The COURT. Why?

Mr. SIMANDL. I don't know that you could ask a man whether he has been indicted on his direct examination.

The COURT. I think so. He can qualify him.

Mr. SIMANDL. Qualify him?

Mr. STANZIALE. I want to show his connection with the case, sir.

The COURT. He is qualifying him, showing his qualifications as a witness, and the jury is entitled to know that. He decided to bring that up. If he wanted to qualify him as a defend-
145a ant here, to let the jury know that he is a defendant in another phase of the proceedings, that would be permissible, because it shows at least his contact and defines his status in the case to the jury, and enables us to judge as to whether he knows what he is talking about or does not know what he is talking about.

Mr. SIMANDL. It seems to me that he is impeaching his witness

Mr. Mr. STANZIALE:

Q. You are indicted in case No. 10-C together with Laudani, Rossi, and Pedevillano?—A. Yes.

Mr. SIMANDL. I make the same objection.

The COURT. Note the objection there of counsel for the defendants. We will consider the objection to all questions of the same import, and note an exception.

Mr. SIMANDL. Yes, sir.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. Now, what is your occupation?—A. Cut stone.

Q. How long have you been in that business?—A. A long time.

Q. About how many years?—A. I learned the other side. After I came on this side I been cutting stone for ten years, and I have been over here about 1937 when I start to work.

Q. Many, many years as a stone cutter?—A. Yes.

Q. Now, did you in April of 1937 belong to any Local union?—A. Yes, sir.

Q. Which one?—A. 47.

The COURT. 47, was it?

The WITNESS. 47.

146a By Mr. STANZIALE:

Q. Now, were you employed on the Lincoln Tunnel as a stone cutter? Were you working on the Lincoln Tunnel?—A. Yes, sir.

Q. Through whom did you get this job?—A. From Frank Laudani.

Q. Do you see Frank Laudani in court?—A. Yes, sir.

Q. Will you point him out?—A. Yes, sir.

Q. Where?—A. In here [indicating].

Q. And do you know Alfredo Rossi?—A. Yes, sir.

Q. Do you see him in court?—A. Yes, sir [indicating].

Q. Mr. DeCesare, you started to work on this job in April 1937?—A. That's right.

Q. How much were you getting an hour at that time?—A. I think $1.50 an hour.

Q. $1.50 an hour. While you were working on this job, were you approached by anyone?—A. I no understand that.

Q. While you were working on this job did you see Alfredo Rossi?—A. Yes, sir.

Q. Did you talk to him?—A. Sure.

Q. What did Alfredo Rossi tell you?

Mr. SIMANDL. I object on behalf of Laudani.

The COURT. Yes, it is limited in its application to Mr. Rossi.

Q. What did you talk to him about?

Mr. SIMANDL. Now, if the Court please, may I point out that there is nothing in the indictment that charges that this man ever paid money to anybody. He is charged as being an aid with having received money from somebody else.

The COURT. But we are not trying him.

147a Mr. SIMANDL. But he is being asked.

Mr. STANZIALE. I am going to prove that this man was a collector.

Mr. SIMANDL. We have not received any notice.

The COURT. I think the question is all right, so far. If it took the form that you are under the impression that it has taken, your objection would be sustained. Watch it and see what form it takes, please.

By Mr. STANZIALE:

Q. After you were on this job two or three weeks——A. That is right.

Q. I believe you testified that you were met by Alfredo Rossi; is that correct?—A. That's right.

Q. Now, what did Alfredo Rossi say to you?

Mr. SIMANDL. I object on behalf of Laudani.

Mr. STANZIALE. Wait, Mr. Simandl. We know that we have a running understanding in this case that any testimony not involving the presence of another defendant is not binding the other defendant.

Every time there is a question put there is an objection. Of course, I don't want to accuse Mr. Simandl of objecting to break my trend of thought; but Mr. Simandl knows that we have a running objection to this effect.

The COURT. The objection is sustained so far as Mr. Laudani is concerned.

By Mr. STANZIALE:

Q. Now, I will repeat the question the third time.

While you were on this job two or three weeks, Mr. DeCesare, I believe you testified you met or saw Mr. Alfredo Rossi; is that correct?—A. That's right.

148a Q. Now, what did Alfredo Rossi say to you, and what did you say to him?—A. He came to me and said a guy says, you know, we got to give so much back. I says, "Somebody else do, I do the same."

Mr. SIMANDL. Now, I object to that and move to have it stricken, if the Court please. That is with respect to his own pay, and that is exactly what I told the District Attorney we had not been charged with and is no part of these proceedings.

The COURT. Suppose we have that answer read. Listen to it and see if we understand it correctly.

(The last answer was read by the reporter.)

Mr. STANZIALE. This is conversation between the defendants, your Honor. This testimony is in connection with the subject matter of the indictment. We have a right to go into what the conversation was about.

Mr. SIMANDL. If the Court please, may I call your attention to the fact that this gentleman was charged, with Mr. Rossi and several others, with having received from a third person named in the indictment, certain moneys.

I objected before and your Honor told me that I was correct if it developed that they were trying to establish an arrangement that he was supposed to have made for the return of payment of some money.

Now, I say that we are not charged with this. It is no part of the indictment, and your Honor ruled that yesterday. I say that testimony should be stricken out.

The COURT. Will you read that answer, please, Mr. Stenographer?

149a (The last answer was read by the reporter.)

The COURT. That, just as it stands now, might be permissible; but how much further do you propose to go along that line? I think I could properly let that stand, but I don't think I could let you go to the end of the road, Mr. Stanziale.

Mr. STANZIALE. All right, for the time being.

The COURT. I will overrule the objection there, Mr. Simandl, and give you an exception; but I will ask the District Attorney not to proceed any further along the line you have indicated in your

objection, but I think just as it stands now that question and answer can remain, but it can't go any further along that line.

(Which exception is hereby allowed and sealed accordingly.)

[SEAL] GUY L. FAKE,
U. S. D. J.

We have to be very careful that we don't introduce evidence of other matters than those covered in the indictment, than those for which these defendants are being tried.

By Mr. STANZIALE:

Q. Mr. DeCesare, I believe you testified that you started to work in the month of April 1937.—A. That's right.

Q. Did you continue that work in March 1938, with this company?—A. Yes.

Q. Now, from April 1937 to March 1938, did you receive any money from any of the workmen on this job?—A. Yes, sir.

150a Q. Who did you receive money from?—A. I think——

Mr. SIMANDL. I object, if the Court please.

The COURT. Objection overruled on that. You are coming now to another phase of it and I don't want to make any comment.

Mr. SIMANDL. May I state my grounds?

The COURT. No; I would rather you not state your grounds.

Mr. SIMANDL. All right. I pray an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

The COURT. You just wait a minute until a couple of more questions are asked and unless these questions take the form that I think they might take we will reconsider our ruling on that. I don't want to make any comment.

By Mr. STANZIALE:

Q. Who did you receive money from while you were on the job, the names?—A. Trolicchio——

Mr. SIMANDL. I object.

The COURT. Now wait. I want to ask Mr. Stanziale, whether you have talked to this witness, and I will ask you whether or not the names that he is about to mention are those covered in the indictments that are covered by this trial, some of the persons mentioned in these counts.

Mr. STANZIALE. Lasorsa and Lamastra are covered in the indictment.

I believe Vito Trolicchio is covered in the indictment and Vito Sciancalepore is covered.

151a Mr. SIMANDL. Wait a minute. There are no such names.

Mr. STANZIALE. Lasorsa and Lamastra are covered in the indictment.

The COURT. Will you confine yourself to the persons that are covered in the indictments that are now on trial.

By Mr. STANZIALE:

Q. Did you receive any money from Lamastra?—A. Yes, sir.

Mr. SIMANDL. I object.

The COURT. Objection overruled. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. Did you receive any money from Lasorsa?—A. Yes, sir.

Mr. SIMANDL. I object.

Q. Did you receive any money from Alfio Tomasello?—A. Tomasello, no.

Q. Was Lamastra on the job?—A. Yes.

Q. And was Lasorsa a workman on the job?—A. Yes.

Q. Were they workmen on this job?—A. Yes, sir.

Q. Now, who else did you receive money from?—A. Trolicchio.

Mr. SIMANDL: I object to these names.

The COURT. Are these covered in the five indictments that we are trying?

Mr. SIMANDL. No.

The COURT: Objection sustained.

152a By Mr. STANZIALE:

Q. Now, what did you get from Lamastra and Anthony Lasorsa?

Mr. SIMANDL. This is all subject to my objection.

The COURT: Yes.

Q. Did you get any money from them?—A. Yes.

Q. What did you do with the money that you got from Anthony Lasorsa?

Mr. SIMANDL. There is no foundation laid for this testimony.

The WITNESS. I give it to Rossi.

Mr. SIMANDL. Is my objection noted?

The COURT. Yes; that is the reason: I thought it would take that turn: I thought it would have that relevancy.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

By Mr. STANZIALE:

Q. How many times did you collect money from Onofrio Lamastra? How many times would you say over this period of time from April 1937 to March 1938?—A. Well, when we get paid.

Q. Did you do that every week?—A. Yes, sir.

Q. You collected this money?—A. Yes, sir.

Q. And you brought it to Alfredo——

Mr. SIMANDL. Wait a minute. He has not said that. This fellow is intelligent.

I don't think it is fair to say "You did this," and "You
153a did that," and ask the witness to say yes. That is indicating pretty clearly the way he wants the man to testify. Let the man testify to the facts. He is an intelligent fellow.

The COURT. Suppose we have the stenographer read the question.

Mr. STANZIALE. There is no answer suggested.

The COURT. Wait a minute, please. He went to work about April in 1937. Ask him how many weeks he worked.

Mr. STANZIALE. He testified he worked from April 1937 to March 1938.

The COURT. Ask him when did he begin to make these collections from these two men.

By Mr. STANZIALE:

Q. All right. How long after you were on this job, Mr. DeCesare, did you begin to make these collections?

Mr. SIMANDL. May I make it clear? I understand that I have an objection and an exception to all testimony of this nature and then I won't make any further objections. I won't continue to interrupt.

The COURT. Yes; I consider that your objection goes to this whole line of——

Mr. SIMANDL. Of similar testimony.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

The COURT. If a question out of this particular line comes up that you think objectionable, why then, renew your objection, if you will.

Mr. SIMANDL. Yes; if the Court please.

154a Q. You made these collections?—A. That's right.

Q. How often did you make these collections?—A. I didn't get that.

Q. How many times a week or a month did you make these collections. Did you make it by the week or two weeks, or by the month?—A. Every week.

Q. And when you collected this money every week, whom did you bring it to?—A. To Rossi.

Q. Now, did you bring any money to Frank Laudani?—A. No, sir.

Q. Just to Rossi?—A. All to Rossi.

Q. Now, during this period of time did you have any conversation with Frank Laudani about these collections?—A. Well, we have nothing to—I no think we have any conversation.

Q. Well, did you or didn't you, Mr. DeCesare; not what you think. Did you talk to Mr. Laudani about these collections?—A. I talked to Rossi. I no talk to Mr. Laudani.

Q. Was Mr. Laudani there?—A. No, sir. That is on the job?

Q. On the job.—A. Yes, sir.

Q. Did you ever talk to Mr. Laudani outside of the job about these collections?—A. No.

Mr. SIMANDL. If the Court please, the man has already answered three times that he had not spoken to Mr. Laudani.

The COURT. He says it again now that he did not.

Q. Away from the job did you ever talk to Mr. Laudani about the collections?—A. We didn't talk about the collections; but we talk different——

Q. What did you talk about?

155a Mr. SIMANDL. I object, if the Court please.

Mr. STANZIALE. Your Honor please, I am trying to examine this witness. I realize, if your Honor please, that this witness is on the witness stand, called by the Government, and offered by the Government, and I believe I would like to ask this question of him, and I believe I have a right to.

The COURT. You can ask him what they conversed about to see if it had any relation to the charges or not. If it had no relation to him, something entirely extraneous, why, we would not be interested.

Mr. STANZIALE. Exactly, that is what I am asking him.

Mr. SIMANDL. He has already answered three times.

The COURT. You asked him what he did talk about and he was about to say something.

Mr. STANZIALE. That is when the objection came on.

The COURT. Objection overruled.

Mr. STANZIALE. That is when the objection came on, when he was about to say something.

Mr. SIMANDL. If the Court please, I thought I objected at the proper time. When I don't do the proper thing, will you call me for it, please; but please, I prefer that you call me, because I recognize you as the boss.

By Mr. STANZIALE:

Q. Where did you talk to Laudani outside of the job during this period of time?—A. All time we talk.

Q. Where? Where outside of the job?—A. In the job. The job is big.

156a Q. Did you talk to him away from the job, Mr. DeCesare?—A. No, sir.

Q. Only on the job?—A. On the job.

Q. Did you ever see him in the union headquarters?—A. Once in a while.

Q. And this was during the period of time that you were working on the Lincoln Tunnel?—A. Yes.

Q. Now, did you after that time that you spoke to Mr. Laudani discuss with him about the collections that you were making and bringing to Alfredo Rossi?—A. No; he never told me.

Q. Did you tell him?—A. No.

Q. You never did?—A. No.

Q. Did he ever ask you?—A. No.

Q. Are you sure?—A. Yes.

Q. What was that?

Mr. SIMANDL. Wait a minute. I heard it all the way over here.

Mr. STANZIALE. He seems to be so doubtful that I want him to repeat it.

The WITNESS. He never mentioned that, because we never have anything to do with outside. We never talk about business.

Q. I am talking about the time you were in the union headquarters.—A. The meeting——

* * * * * * *

By Mr. STANZIALE:

Q. Now, do you know Vito Trolicchio?—A. Yes.

Q. Do you know Anthony Lasorsa?—A. Yes, sir.

Q. Do you know Matteo Viaggio?—A. Yes, sir.

157a Q. Now, Mr. DeCesare, were Vito Trolicchio and Vito Sciancalepore working on this job with you?—A. Yes, sir.

Q. During the period of time that you were working there?—A. Almost.

* * * * * * *

By Mr. STANZIALE:

Q. Now, Mr. Witness, I believe you testified that after two or three weeks that you were on this job that you started to make these collections, is that correct?—A. Yes, sir.

Q. Who told you to make these collections?

Mr. SIMANDL. I object, if the Court please. We have been all through this.

The COURT. You see, we have had a break in the proceedings, and the continuity of this restores our line of thought. It may have been covered; but do you mind letting this take this turn now?

By Mr. STANZIALE:

Q. Who told you to make the collections?—A. Rossi.

Q. What did Rossi tell you about these collections? What instructions did you get?—A. He says, "Somebody pay back and you got to do the same."

Q. What was that?—A. He says to me, "You see, everybody do the same, and you got to do the same."

Mr. SIMANDL: I object to that question.

That was exactly the question that I objected to, and that was exactly the question that your Honor ruled that he should go no further.

Mr. STANZIALE. Mr. Simandl, you exasperate me. I didn't put the question to him for that answer.

Mr. SIMANDL. I am speaking to the Court.

158a Q. (The pending question was read by the reporter.)

Mr. STANZIALE (To the witness). As nearly as you can about the collections.

The COURT. Objection overruled. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr. STANZIALE. Will you listen to Mr. Waxman, the stenographer?

Q. (The pending question was read by the reporter.)—A. He says to me, he says, "Everybody do the same; you got to do the same," that's all.

Mr. SIMANDL. I again move that that be stricken out, if the Court please.

The COURT. Well, it is not quite responsive, but motion overruled. Exception granted

GUY L. FAKE,
U. S. D. J.

We will let it stand. It is not quite responsive to the question you asked.

Mr. SIMANDL. Not only that, if the Court please, your Honor has already ruled. This man is not charged with having paid any moneys back. I move that it be stricken out.

The COURT. There is another angle that may make it very relevant.

159a By Mr. STANZIALE:

Q. Did anyone give you a list of names from whom you should collect money?

Mr. SIMANDL. But, if the Court please——

Mr. STANZIALE. I am trying to help this witness answer the question.

The COURT. Wait a minute: that can be relevant.

Mr. SIMANDL. I know, but it can be very leading.

Mr. STANZIALE. May I ask the interpreter to interpret the questions?

The COURT. That can be extremely relevant, Mr. Simandl; and standing alone, it does not do any harm. The answer can be yes or no. Then I will ask the District Attorney if he will confine his questions as to any names that might be on that list, to those who are in the indictments which we are trying. Do you see what I mean?

Mr. SIMANDL. May I have an exception to your Honor's ruling?

The COURT. Yes; exception given to the defendants.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

By Mr. STANZIALE:

Q. Did you have a list of the names from whom to collect?—A. No, sir.

By the COURT:

Q. Were you told any names? And I note, Mr. Simandl, your objection goes to that too.—A. The name, yes—what name?

160a By Mr. STANZIALE:

Q. From whom you were to collect money.—A. Yes; I know about the name; I know about the person, that is all I know.

Q. When you were to make these collections to Mr. Rossi—

Mr. SIMANDL. May I make it perfectly clear to the Court: This witness said he got certain money from certain men on certain days and he brought it to Mr. Rossi. He has not said that he did that as collections for anything of that sort. He said, "I got certain money. It was handed to me; and I handed it to Mr. Rossi."

Now, he is using the words "as a collection" or something of that sort. The witness has said that that is not so.

Mr. STANZIALE. My recollection is that the witness said he was requested by Mr. Rossi to make collections.

Mr. SIMANDL. May I say to the Court, humbly, that all this witness was trying to say was that he had a conversation with Mr. Rossi; and you told me that we are permitting that particular answer to stand. He said Rossi said to him others were making payments and he must too.

Now, I object to that. I say that that is not within the scope of this trial.

Mr. STANZIALE. That is not my recollection, sir.

The COURT. I understood Mr. DeCesare to say that he collected money from two persons, particularly, who are set forth

in these indictments that are now on trial and that he paid that money over to Mr. Rossi.

Mr. SIMANDL. Yes, sir.

161a The COURT. Now, then, Mr. Stanziale is about to ask him whether or not there was any conversation with reference to those collections and those payments between the witness and Mr. Rossi.

"Were there any instructions given to him?" That would be clearly relevant.

Mr. SIMANDL. He has answered that by saying "No."

The COURT. No. wait a minute. Let us see whether the witness understands what it is all about. After all, there is a discussion and he might be confused.

By Mr. STANZIALE:

Q. Did Mr. Rossi tell you to make the collections from Lasorsa?—A. Yes, sir.

Q. And when he told you to make these collections did he tell you how to make the collections?—A. Well, you see, he says to me, "You know these two men over here?"

I says, "Yes; that is my friends." What I suppose to say, no? That is my friends.

And he says, "When they pay day come, you get the money and you give it to me." That's all.

Q. Did he tell you what amount you were supposed to get or you were to collect?

Mr. SIMANDL. I object.

The COURT. You can ask him whether there was any discussion about the amounts.

Q. Was there any talk about the amount you were supposed to get from the men that you were to bring to him?—A. No; he don't see the men. When I get money, I give it to him.

162a Q. Was there any discussion with Mr. Rossi as to how much you were to get from these men?—A. No.

Mr. STANZIALE. All right. Cross examine.

Mr. SIMANDL. No questions.

(Witness excused.)

ANTHONY LASORSA, called and sworn for the Government, testified as follows:

Direct examination by Mr. STANZIALE:

Q. You understand English?—A. Yes.

Q. What is your occupation?—A. Stone cutter and mason.

Q. How long have you been a stone cutter?—A. Since I was a little boy and learned the trade.

Q. In 1937 were you a member of any Local?—A. Yes, sir.
Q. What Local?—A. 47.
Q. What is that, A. F. of L. or C. I. O.?—A. A. F. L.
Q. Who was the president of that Local at that time?—A. Mr. Laudani.
Q. Do you know Mr. Laudani?—A. Yes, sir.
Q. Do you see Mr. Laudani in court?—A. Yes [indicating].
Mr. STANZIALE. For the record pointing to the defendant Laudani.
Q. Do you know Alfredo Rossi?—A. Yes, sir.
Q. Do you see him in court?—A. Yes, sir.
Q. Will you point him out, please?—A. There he is, right there [indicating].
163a Mr. STANZIALE. Pointing to the defendant Rossi, for the record.
Q. Now, in the month of October 1937, were you employed on the Lincoln Tunnel?—A. Yes, sir.
Q. Through whom did you get the appointment?—A. Through Mr. Laudani.
Q. What was the rate of pay when you went to work there?—A. $13.20.
Q. Is that $1.88½ per hour?—Yes, sir.
Q. Now, you say you got this job from Frank Laudani?—A. Yes, sir.
Q. Was Frank Laudani on the job at that time?—A. I really don't know; but I think he was the superintendent.
Q. Now, for how long a period did you work there?—A. I think it was from the beginning of October to about the middle of December, I think.
Q. The same year?—A. The same year.
Q. Now, were you paid every week?—A. Yes, sir.
Q. At the rate that you just indicated?—A. Yes, sir.
Q. $1.88 per hour?—A. Yes, sir.
Q. What, if anything, did you do with your pay when you received it?—A. Well, the first week when I got the job over there, you see, a friend of mine on the job there told me——
Mr. SIMANDL. I object to that, now, if the Court please.
The COURT. Objection sustained as to what his friends told him.
Q. You had a conversation with the friend?—A. That's right.
Q. As a result of the conversation that you had with this friend what did you do with your pay?—A. The
164a pay I kept, but I gave some to one of the fellows that came to collect.
Q. Who is this man?—A. DeCesare.

Q. The man that was previously on the stand?—A. I don't know.

Q. How much of your pay did you give to Baetano DeCesare who came to collect?—A. I don't know, because we used to get a different wage weekly; and sometimes it was one amount and the other time it was a different amount. It was not always the same amount.

Q. Well, what amount did you pay the first week that you went there?—A. I could not remember.

Q. Well, could you approximate?—A. No, sir.

Q. You don't know whether it was 25 or 35?—A. I don't know.

By the COURT:

Q. Was it based on an hour work?—A. Yes, sir.

Q. How much per hour?—A. 35 cents an hour.

By Mr. STANZIALE:

Q. And did you pay this to Mr. DeCesare who came to collect each and every week that you were employed on the job?—A. Yes, sir.

Q. When did you make these payments?—A. On the job.

Q. What?—A. On the job.

Q. Well, when?—A. The same day that you got paid?—A. No, after one day. Either on a Monday or——

Q. Either on a Monday or——A. Yes, after we got paid, of course.

Q. And did you say that you paid on the job itself?—A. Yes, sir.

Q. When the collector came around?—A. Yes, sir.

Mr. STANZIALE. That is all.

165a Cross-examination by Mr. SIMANDL:

Q. Mr. Lasorsa, you got your job through DeCesare, didn't you?—A. I beg your pardon?

Q. You got your job through DeCesare, didn't you?—A. No, sir.

Q. You didn't get your job through him?—A. No, sir. I didn't know the man at the time, sir.

Q. You didn't know the man?—A. No, sir.

By the COURT:

Q. Where did you learn your trade?—A. In the old country, sir.

Q. How old were you when you started?—. About 13 or 14 years old.

Q. How long were you an apprentice there?—A. Three years, or three and a half; it depends how much you learn. In fact, in the stone cutter trade you never stop learning.

The COURT. All right.

(Witness excused.)

VITO SCIANCALEPORE, called and sworn for the Government, testified as follows:

Mr. STANZIALE. This man will need an interpreter, sir; and I have an interpreter here.

(The testimony of this witness was given through Mr. Langione, the Italian interpreter.)

By Mr. STANZIALE:

Q. What is your occupation?

166a Mr. SIMANDL. If the Court please, I want to make it perfectly clear. This is the subject matter of this offer that was denied by the Court. This indictment is not on trial, nor is this man named on that indictment.

Mr. STANZIALE. I am offering this witness and proper objection may be made.

Mr. SIMANDL. Now, I don't think that is fair.

Mr. STANZIALE. I have a right to ask this witness the question.

The COURT. I can't pass on anything yet, Mr. Simandl.

Mr. SIMANDL. May I point out to the Court, that the District Attorney in the absence of the jury offered this testimony. This is the testimony and another witness is the subject matter of the offer which your Honor ruled upon outside of the presence of the jury; and may I point out to the Court, nobody questioned the good faith of the offer of the District Attorney or his ability to prove the subject matter of the offer.

I submit, the calling of these witnesses after your Honor took the pains to have the situation dismissed, out of the presence of the jury, I don't think is right.

The COURT. Well, I don't know whether the witness is called for that particular phase of it or not. There may be another angle that this witness can testify to properly, notwithstanding the other feature which has been excluded, and if the testimony is proper, well, of course, we will all be glad to admit it. I don't think the District Attorney would intentionally transgress.

167a Mr. SIMANDL. May I ask through your Honor that you ask the District Attorney if that is not the exact same testimony that he offered before your Honor and your Honor has ruled out?

The COURT. I would not want to do that, Mr. Simandl, because I would be impugning the good sportsmanship and the official integrity of Mr. Stanziale.

Mr. STANZIALE. Now, not only that. Here is the point: I don't want to be muzzled in this case by any premature ideas that Mr. Simandl has. I am presenting the case as I see fit to present it, and I don't intend to take the dictates of Mr. Simandl.

The COURT. You ask your question, and you ask the witness to withhold the answer until the question is asked, and then we will make better progress.

By Mr. STANZIALE:

Q. What is your occupation?—A. Stone mason.

Q. How long have you been a stone mason?—A. Since I was a little boy.

Q. Did you learn the trade here or in Italy?—A. In Italy.

Q. Now, were you working for the Cape Ann Granite Company?—A. Yes; I did.

Q. Did you work from the beginning of September 1937 to December 1937?—A. Yes, sir; I did.

Q. Through hom did you get the job?—A. A friend of mine.

Mr. SIMANDL. May I ask the District Attorney to state in support of what indictment we are now trying he is offering this testimony?

I say to your Honor, this man is not mentioned in any of the indictments that we are now trying.

168a The COURT. Now, we will take that for being a verity; but I will have to wait, or I think I should wait for the District Attorney to propound his question, and we will go one step at a time. When he proposes to take a step and we feel that he is crossing over the line, why, we will discuss that.

Mr. STANZIALE. That is the way I prefer it should be done, sir; and I think it is the way it should be done.

The COURT. You know what you are trying to accomplish. If you can accomplish that purpose without crossing that line, all right. Don't cross the line.

By Mr. STANZIALE:

Q. Do you know Frank Laudani?—A. Yes, sir; I do.

Q. Do you see him in court?—A. Right there [indicating].

Q. Do you know Alfredo Rossi?—A. Yes. This is the gentleman right there [indicating].

Q. Now, when you were working on this job, were Laudani and Rossi there?—A. Yes; they were there.

Q. Did you get your job from Frank Laudani?—A. Yes, sir.

Q. How much an hour were you paid?—A. I believe it was about $1.88. I know that I was getting $13 per week, and I don't know what that will make an hour.

Q. Per week or day?—A. Per day. $13 per day.

Q. Do you remember when you got your pay?—A. Sure I know; I remember.

Q. What, if anything, did you do with your pay when you got it?

Mr. SIMANDL. I object, if the Court please.

169a The COURT. Objection sustained.

Mr. STANZIALE. All right, I am through with this witness.

Mr. SIMANDL. That is all.

Mr. STANZIALE. No, just a moment. I want to ask one more question.

By Mr. STANZIALE:

Q. Mr. Sciancalepore, did you make any payments to one DeCesare?

Mr. SIMANDL. I object, if the Court please. That is exactly the same question that your Honor——

The COURT. Objection sustained.

Mr. STANZIALE. I call Mr. Vito Trolicchio.

Mr. SIMANDL. If the Court please, that is exactly what I said when I got before the Court and most humbly said that that offer included this exact situation.

The COURT. There were features there to which you could properly testify. All these elements contained in paragraph 1 are matters which are relevant.

Mr. SIMANDL. May we address the Court at side bar? Will Mr. Stanziale step up at side bar?

(Discussion at side bar off the record.)

VINCENZO LIOTTA, called and sworn for the Government, testified as follows:

(The testimony of this witness was given through Mr. Langione, the Italian interpreter.)

Direct examination by Mr. STANZIALE:

Q. Mr. Liotta, what is your occupation?—A. Stone mason—stone cutter and stone mason.

170a Q. And how long have you been in that business?—A. Since I was a little boy.

Q. Did you learn the trade in this country or in Italy?—A. In Italy.

Q. How long are you in this country?—A. From 1904.

Q. Now, in January 1937 to February of 1938, did you work as a stone mason on the Lincoln project?—A. Yes, sir, I did.

Q. Do you know Frank Laudani?—A. Yes, I do.

Q. Do you see him in court?—A. Yes, sir, I do. There is the gentleman right there [indicating].

Q. Do you know Alfredo Rossi?—A. Yes.

Q. Do you see him in court?—A. The gentleman right there [indicating].

Q. Did you get this job from Frank Laudani?—A. I did get the job through Frank Laudani, because he knew me through another job.

Q. Now, do you know Antonio Sigiga?—A. Yes, he is a friend and co-laborer.

Q. Mr. Witness, at any time that you were working on this job, from the period of January 1937 to February of 1938, did you bring to Mr. Laudani any moneys?

Mr. SIMANDL. I object, if the Court please. That places me in a position where I don't know what indictment he is trying to establish.

The COURT. Wait a minute. Your word was "bring."

Mr. STANZIALE. Yes. I will change that to "collection."

The COURT. Yes, the word "bring," as distinguished from his pay.

Mr. STANZIALE. Yes, as distinguished from his pay.

171a The COURT. Objection overruled. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr. SIMANDL. Was this in connection with the persons mentioned in the bills of indictment?

Mr. STANZIALE. Let him answer the question yes or no.

The INTERPRETER. Could I have the question, please.

Mr. SIMANDL. May I have my exception noted?

The COURT. Yes.

(The last question was read by the reporter.)

Mr. STANZIALE. Yes or no.

The WITNESS. No, sir.

By Mr. STANZIALE:

Q. Did you take any money to Laudani for this period of time?

Mr. SIMANDL. Now, can I interpose my objection?

Mr. STANZIALE. I will reframe my question.

The COURT. Ask him if he carried it.

The WITNESS. From my account not, but Mr. Siggia give it to me some money to bring Mr. Laudani, and I did.

Mr. SIMANDL. I object to that. That is exactly what——

The COURT. Objection sustained; and the answer will be stricken.

Mr. STANZIALE. Will you please interpret this question as I ask it?

172a Q. Did you take any money from any men on the job to Mr. Laudani? Ask him yes or no.

* * * * * *

Mr. STANZIALE. I will withdraw this witness, sir.

(Witness withdrawn.)

MAURO LEONE, called and sworn for the Government, testified as follows:

(The testimony of this witness was given through Mr. Langione, the Italian interpreter.)

Direct examination by Mr. STANZIALE:

Q. What is your occupation, Mr. Leone?—A. Mason.

Q. How long have you been a mason?—A. Since I was 12 or 13 years of age.

Q. Did you learn the trade in Italy or in this country?—A. In Italy, sir.

Q. Did you belong in 1937 to any union?—A. Yes, sir.

Q. What union?—A. Before I was a member of Union 83, and then after I was affiliated with Local 47.

Q. Now, during the beginning of October 1937 to the end of December 1937, were you employed by the Cape Ann Granite Company?—A. Yes, sir, I was.

Q. What kind of work were you doing there?—A. Mason work.

Q. On what side of this project did you work, New York or New Jersey?—A. New Jersey.

Q. Who hired you for this job?—A. Mr. Laudani.

Q. Do you see Mr. Laudani in court?—A. He is that gentleman right there [indicating].

173a Q. Do you know Alfredo Rossi?—A. He is that gentleman right there [indicating].

Q. Do you know what Mr. Rossi was on this job?—A. Yes, sir.

Q. What was he?—A. I don't know if he was a boss or the superintendent.

Q. Was Mr. Laudani a member of your local at that time?—A. I think he was.

Q. Do you know whether he held any position in this union?—A. No, I don't know.

Q. Do you know Onofrio Lamastra?—A. Yes; I do know him.

Q. Who is Onofrio Lamastra?—A. A laborer like me.

Q. Was he, during the period that you were employed by the Cape Ann Granite Company on the Lincoln Tunnel, employed with you at that time?—A. He was there before me, yes.

Q. And while you were there he was working with you at the particular time that he came on the job?—A. Yes, sir.

Q. Do you know Matteo Viaggio?—A. Yes, sir.

Q. Was Matteo Viaggio a worker on the job with you at the time that you were working there?—A. Yes, sir, he was.

Q. Do you know Rocco Pedevillano?—A. Yes, sir.

Q. Was Rocco Pedevillano one of the men that was working with you at the job at the same time that you were working there?—A. Yes, sir.

Q. How long did you know Frank Laudani before you went to work in October of 1937 on this job?—A. I know Mr. Laudani since I got the job from him.

Q. So that as far as you are concerned, you did not know Mr. Laudani before you went to work on this particular job?—A. No, sir.

174a Q. Did you know Gaetana DeCesare?—A. Yes, sir, I do know him.

Q. Was he a worker on the job at the same time that you were working there?—A. Yes, sir.

Q. Mr. Witness, did you give any money to Gaetano DeCesare to bring to Frank Laudani?

Mr. SIMANDL. I object to that, if the Court please. I think that that is absolutely unfair; and I think that the prosecutor knows it.

* * * * * *

Mr. SIMANDL. Now, I move that the last answer and question be stricken and the jury be instructed to disregard it.

The COURT. Yes; and I will ask the jury to disregard it.

* * * * * *

AFTERNOON SESSION

Felice Giovene, called and sworn for the Government, testified as follows:

(The testimony of this witness was given through Mr. Menotti G. R. Langione, the Italian interpreter.)

Mr. SIMANDL. I understand that this is one of those who is not on trial, Mr. District Attorney?

Mr. STANZIALE. I believe so.

Mr. SIMANDL. All right.

Direct examination by Mr. STANZIALE:

Q. What is your occupation, sir?—A. Stone cutter.

Q. And where do you reside?—A. 151 Clinton Street, Hoboken, New Jersey.

175a Q. Now, were you employed as a stone cutter by the Cape Ann Granite Company from September 1937 to March 1938?—A. Yes, I was.

Q. Did you belong to any union at that time?—A. Yes.

Q. What union?—A. Local 78.

Q. Do you know whether Mr. Frank Laudani was a member of that union at that time?—A. Of Local 78, no.

Q. Now, who employed you on this job?—A. Frank Laudani.

Q. Do you see Frank Laudani in court today?—A. Yes, I do [indicating].

Q. Do you know Alfredo Rossi?—A. Yes, that gentleman right there [indicating].

Q. Do you know what position Frank Laudani occupied on this job with the Cape Ann Granite Company?—A. Superintendent.

Q. Was this the job that was on the Lincoln Tunnel project?—A. Yes, sir, the Lincoln Tunnel project.

Q. What side did you work on, on the New York or the New Jersey side?—A. On the Jersey side.

Q. How much were you receiving per hour when you started to work?—A. $1.88½ per hour.

Q. Do you know Matteo Viaggio?—A. Yes, I do know him.

Q. Was he a co-worker with you at the time you were employed there?—A. Yes, he was.

Q. Do you know Rocco Pedevillano?—A. Yes, I do.

Q. Was he working with you at the time that you were employed there?—A. Yes, he was.

Q. I believe you testified that Mr. Frank Laudani engaged you or hired you for this work?—A. Yes, he did.

Q. Did you have any conversation with Mr. Frank Laudani in relation to your work on this project?

Mr. SIMANDL. I object, if the Court please.

Mr. STANZIALE. May I be heard on that, sir?

176a The COURT. The question was, did he have any conversation with Mr. Laudani in relation to his work on that project?

Mr. STANZIALE. Yes, sir. May I be heard on that, sir?

The COURT. Wait a minute. He can answer that yes or no; and I will give you an exception to it.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. (The pending question was read by the reporter.)—A. No, sir.

Q. Now, while you were working on this job from September, I believe, 1937, to March 1938, did you have occasion to see Frank Laudani on this job?

Mr. SIMANDL. That is objected to, excepting if the answer is merely yes or no, if he saw him.

The COURT. That is the only thing that can properly be answered yes or no.

Q. (The pending question was read by the reporter.)—A. I saw Mr. Laudani every day, almost.

Q. Now, when were you paid for your work on this job?

Mr. SIMANDL. I object to that as being immaterial so far as this issue is concerned.

The COURT. When what?

Mr. STANZIALE. When was he paid for his work?

The COURT. Objection overruled; exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

177a What day of the week do you mean?

Mr. STANZIALE. Yes.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

By the COURT:

Q. How often?—A. Every Friday I was paid.

By Mr. STANZIALE:

Q. When you received your pay did you keep the full amount of the pay that you had?

Mr. SIMANDL. Now, if the Court please, obviously that is a violation of the rule that your Honor has already announced. That is by indirection trying to get in the very thing that your Honor has ruled out; and the District Attorney knows it.

The COURT. Objection sustained.

Mr. SIMANDL. The difficulty is, if the Court please, that after your Honor has ruled, after he has tested your Honor's fire, then he evades your Honor's ruling, and by these processes, he indirectly brings before the jury the very matters your Honor has said should never be brought before the jury; and I submit, your Honor, that this is highly prejudicial.

The COURT. I can tell the jury very plainly that there is no testimony on the record to that effect, and whether he can testify one way or the other, we don't know.

There is no testimony that can weigh with the jury except the testimony that is of record that we are admitting. From
178a this point on, nobody knows what the witness' testimony would be. He is called and your objection is made, and it is sustained.

What the witness has testified to was that which has just come from his own lips relating to the matters covered which he has been permitted to answer.

Note the objection there, please. I sustain the objection.

The COURT. Go ahead.

By Mr. STANZIALE:

Q. Were you paid your salary or your wages each and every week for the time that you worked there?—A. Yes, sir.

Q. You were paid, on the Friday, I believe you testified, of each and every week?—A. Every Friday of every week.

Q. At the time that you were paid either on Friday or the succeeding Monday or Tuesday, did you have occasion to see either Frank Laudani or Alfredo Rossi?

Mr. SIMANDL. I object to the question, if the Court please, and I submit, if the Court please, that this is a very highly irregular proceeding.

The COURT. With somebody else or alone?

Mr. STANZIALE. With someone or were you alone?

The COURT. Well, I will allow you to ask the question "With someone," but not if he was alone.

Mr. STANZIALE. All right; I put it in that way.

The COURT. All right; and I give you an exception to that.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

179a The question was whether on Monday or Tuesday after he was paid each week, he saw Mr. Laudani in conjunction with somebody else.

The WITNESS. He was always on the job, when I was working there.

By Mr. STANZIALE:

Q. After you received your pay?

Mr. SIMANDL. I again object, if the Court please.

The WITNESS. I saw Mr. Laudani in the office when I was giving him the money.

Mr. SIMANDL. I ask that that be stricken. That is absolutely improper. That is the danger, if the Court please——

The COURT. I agree with you on that. This will be stricken. Members of the jury, I ask you to completely disregard it.

Do you mind if I tell the jury just what we are trying to do here? I don't want to say something that I ought not to, but I don't want the jury to feel that we are just fencing it, because they have to pass upon the facts.

Members of the jury: If this witness was able to tell us what he saw in conjunction with these defendants and these other men whose names appear on the indictment, his testimony would be proper. If it has to do with anything else except the men mentioned in the five indictments that are before us, why, it is improper. We are taking this rather under difficulties. We are continually trying to let the proper testimony in and keep improper testimony out; so I don't want you to get the impression from the rejection of testimony, or any inference from
180a the testimony, except that which comes from the stand. You are to draw no conclusion from the rejection of testimony. That is what we are trying to do. We want to give you everything we can; but we don't want to have anything coming from the witness stand to the jury that is not proper.

Now, you know what we are trying to accomplish. You will realize that we have to skate up to the hole in the ice pretty close at times.

Mr. STANZIALE. I am through with this witness.

Mr. SIMANDL. No questions.

Mr. STANZIALE. I call Santo DiCosta.

Mr. SIMANDL. He is in the same indictment mentioned with Felice Giovene who has just left the stand.

Now, I submit, if the Court please, that this is an attempt to bring in before the jury a lot of people whom the District Attorney knows, or should know, according to the preparation of his case, obviously are in indictments other than those on trial.

After he has tested your Honor's ruling, the District Attorney is attempting to bring in before this jury this improper testimony.

I submit, now, if the Court please, that this is the character of act that the U. S. *vs.* Berger has denounced as improper, and I submit that it should not be carried on. It certainly is improper.

* * * * *

Mr. STANZIALE. I am going to offer the following witnesses, if the Court, please, for the question of employment on the job by Frank Laudani.

181a Mr. SIMANDL. We admit, if the Court please, and save the Court and jury an awful lot of time——

The COURT. What will you admit?

Mr. SIMANDL. We will admit that Mr. Laudani was the foreman on the job and hired and fired these men.

The COURT. You see, there are other things in this recital part.

Mr. SIMANDL. I will admit any of the recital parts of the indictment.

Mr. STANZIALE. That is a very kind offer of Mr. Simandl, but I would rather call them in time.

The COURT. Well, you will have to keep them in due bounds.

SANTO DICOSTA, called and sworn for the Government, testified as follows:

(Testimony of this witness was given through Mr. Menotti G. R. Langoine, the Italian interpreter.)

Direct examination by Mr. STANZIALE:

Q. What is your occupation, Mr. DiCosta?—A. Stone cutter.

Q. How long have you been in that business?—A. Since I was born.

Q. And you have been a stone cutter then, I take it, from Italy?—A. Yes, from Italy, is right.

Q. How long are you in this country?—A. Thirty-eight years.

Q. And you have been pursuing that occupation since?—A. Yes, I did.

Q. From August 1937 did you work for the Cape Ann Granite Company?—A. Yes, I did.

182a Q. And was the work on the Lincoln Tunnel project?—A. Yes, sir, it was the Lincoln Tunnel.

Q. How much were your wages per hour?—A. $13.20 per day for seven hours work.

Q. Is that $1.88½ per hour?—A. Yes, sir.

Q. Do you know Frank Laudani?—A. Yes, I do.

Q. Do you see Laudani in court?—A. Yes, that gentleman there [indicating].

Q. Do you see Alfredo Rossi in court?—A. Yes, that gentleman right there [indicating].

Q. Do you know one Matteo Viaggio?—A. Yes.

Q. Who hired you on this job?—A. I ask for job to Matteo Viaggio.

Q. After you spoke to Matteo Viaggio did Frank Laudani hire you on that job?—A. Yes, sir, Mr. Laudani give me the job.

Q. And were you paid that salary each and every week thereafter?—A. Yes, sir.

Mr. STANZIALE. That is all.

The COURT. All right. Cross-examine.

Mr. SIMANDL. No questions.

* * * * *

STEVEN S. SARRAPEDE, called and sworn for the Government, testified as follows:

Direct examination by Mr. STANZIALE:

Q. Mr. Sarrapede, during the year 1939 what department of the United States Government were you connected with?—A. I was with the Division of Investigation of the Federal Works.

Q. And how long, from that time, were you connected with this particular department?—A. I commenced my employment with them around June of 1934.

183a Q. And you were one of the special agents in charge of the investigations with that department?—A. I was.

Q. Now, were you one of the special agents in charge of conducting an investigation in the Matter of the U. S. vs. Frank Laudani and Alfredo Rossi, and others?—A. I was.

Q. Was anyone else associated with you?—A. Yes, there was.

Q. Could you tell us who he was?—A. Special Agent Morris A. Fitzgerald.

Q. Do you know where Mr. Fitzgerald is today?—A. I believe he is with the F. B. I. in Washington at the present time.

Q. Now, Mr. Sarrapede, on February 7th, 1939, did you have occasion to interview Frank Laudani?—A. I did.

Q. Do you see in court the person that you know as Frank Laudani?—A. I do.

Q. Will you please point him out?—A. He is at the end of the table there [indicating].

Q. And at or about that time did you have occasion on February 3, 1939, to interview one Alfredo Rossi?—A. I did.

Q. Do you see in court the man that you know as Alfredo Rossi?—A. I do. That is the gentleman [indicating].

Q. Now, Mr. Sarrapede, can you tell us where you interviewed Mr. Laudani?—A. I interviewed Mr. Laudani at the Sub-Treasury Building in New York City.

Q. Was Mr. Laudani alone or accompanied by anyone?—A. I believe he was alone at that time.

Q. And did you converse with Mr. Laudani relative to your investigation with this particular case?—A. I did.

Q. Will you tell us what you said to Mr. Laudani and what Mr. Laudani said to you in connection with this case?—A. Well, I questioned Mr. Laudani concerning alleged kick-backs which I, in the course of my investigation——

184a Mr. SIMANDL. Now, wait a time. I object to his characterization or anything else. He has been asked for a conversa-

tion and I think that that part of the question is proper. However, I don't think what the witness volunteered is proper.

The COURT. Will you relate the conversation?

The WITNESS. Well, I will relate it to the best of my recollection at the present.

The COURT. Do the best you can. Give us as accurate an account of the conversation as you can, what you said and what he said.

The WITNESS. I asked Mr. Laudani whether he had ever collected any kick-back moneys from any of the workmen working under his supervision on the Lincoln Tunnel project, on the New Jersey side. That question was put to Mr. Laudani several times; and Mr. Laudani denied that he had ever—or rather, he informed me that he had never collected any kick-back money from any of the workmen employed under his supervision at the construction.

The COURT. Was the conversation in English or Italian?

The WITNESS. In English. I then asked Mr. Laudani whether he had collected any moneys at all from the workmen under his supervision at the project, and he informed me that he had. Mr. Laudani stated that he had loaned approximately $500 to various workmen at the project during the entire period of the work; and stated that he had received these moneys from the workmen as the work went on. He denied that any of these moneys were kick-back moneys and insisted that they were purely loans which he subsequently received from the workmen.

185a I asked Mr. Laudani whether he could tell me the names of the workmen to whom he loaned the money, but he told me that he could not recall any of the names.

I think that was the gist of our conversation.

By Mr. STANZIALE:

Q. Did you ask Mr. Laudani whether he was connected with any union?

The COURT. Or trade union?

Q. (Continuing.) Trade union?—A. I did.

Q. What was his answer?—A. I believe he informed me that at the time he was connected with Local 47 in Brooklyn, New York.

Q. Did he tell you what his position was with the union during the year 1937?—A. He did; but I am not certain now whether he told me whether he was the business agent, or the president of that particular Local.

Q. Did you ask him what his capacity was with the Cape Ann Granite Company in the early part of November 1936 up to and including the completion of this job?—A. I did.

Q. What did he tell you?—A. I believe he informed me at that time that he was general foreman or superintendent, in complete charge of the workmen at the project.

Q. Did your have any conversation with him as to his power of hiring and discharging employees?—A. I did.

Q. What did he say?—A. He told me that his authority to hire and fire the workmen on that job was not subject to revocation by anyone on the job.

Q. Did you have any conversation with Mr. Laudani relating to any record kept of any of the loans purportedly having been given to any of the workmen?—A. I believe that I did.

186a Q. And what did he say?—A. He informed me that he didn't have any record.

Q. During that conversation with him did you ask him who the particular persons were that the loans of $500 had been made?—A. I did.

Q. Was Mr. Laudani able to give you the names of any of the persons that he had loaned money to?—A. He was not.

Q. Did you have any conversation with Mr. Laudani in relation to one, Matteo Viaggio?—A. I did.

Q. What if anything did he tell you about?—

Mr. SIMANDL. Wait a minute, if the Court please; in reference to whom?

Mr. STANZIALE. Matteo Viaggio.

Mr. SIMANDL. He is one of those, if the Court please, who is not named in this indictment which we are now trying, and certainly any evidence as to any statement made with reference to that individual would not be admissible in this case.

Mr. STANZIALE. Your Honor please, I have a right to go into the conversation that the defendant had himself, and any statements he may have made; and I don't think that your ruling is now to bind me.

The COURT. When the defendant was discussing this phase of the situation the whole conversation is in order relating to this subject matter, this alleged kick-back. Everything that he said, you can tell us.

I will give you an exception to that.

This is not the same ruling. This is a different phase of it. Note an exception for both defendants.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

187a By Mr. STANZIALE:

Q. What if anything did he tell you about Viaggio?—A. He informed me that Viaggio was employed on this particular

project for a certain period of time, and that at one time during his employment he took leave or was ill and went to Italy, and that he subsequently again returned to the job.

I questioned Mr. Laudani as to whether Viaggio had ever collected any kick-back moneys for Mr. Laudani, and Mr. Laudani informed me, or rather denied that Mr. Viaggio had ever collected any kick-back moneys for him.

Q. Did you have any conversation with him concerning one, Gaetano DeCesare?

Mr. SIMANDL. I object, if the Court please.

The COURT. Note the objection.

Objection overruled. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

The WITNESS. I did.

The COURT. What name was that, please?

Mr. STANZIALE. Gaetano DeCesare.

The COURT. Oh, yes.

The WITNESS. I did.

By Mr. STANZIALE:

Q. Tell us what the conversation was relative to Mr. DeCesare.—A. Well, about the same. It was in about the same connection as the previous conversation with Mr. Viaggio.

Mr. Laudani denied that Mr. DeCesare had ever collected any kick-back moneys for him.

188a Q. Now, I believe you testified that on February 3rd, a few days before you interviewed Mr. Laudani, that you interviewed Alfredo Rossi.—A. I did interview Mr. Alfredo Rossi at or about the same time.

Q. And can you tell us where you interviewed Alfredo Rossi?—A. I believe Mr. Rossi was also interviewed at the Sub-Treasury Building in New York City.

Q. Was Mr. Rossi accompanied by anyone or was he alone?—A. He was alone at that time.

Q. Can you tell us the conversation?

The COURT. Did you tell him who you were?

The WITNESS. Oh, yes. I identified myself in all instances. I exhibited my credentials.

Q. What conversation did you have with Alfredo Rossi?—A. I questioned Mr. Rossi as to whether he had ever received any moneys from any of the workmen employed on the Lincoln Tunnel project, on the New Jersey side, on which he also was employed.

I don't know how long that interview lasted, but that was the gist of the questions that I put to him, and he denied that he

ever collected any kick-back moneys from any workmen, and that he had ever turned over any kick-back moneys to Mr. Laudani.

Q. Did you, at the time that you interviewed him, ask Mr. Rossi, whether he was employed by the Cape Ann Granite Company, on the construction of the Lincoln Tunnel?—A. I did.

Q. And what was his answer?—A. His answer was in the affirmative, that he was employed on that particular project.

Q. Did you ask him whether he was employed there from the early part of January 1937 to the early part of February 1938?—A. I did; and in that connection, I had before
189a me the pay rolls with respect to the work done on this project, and I knew from those pay rolls the exact hours worked by every individual on that job, and exactly when that work took place.

Q. And did you ask him whether he was working on the New Jersey side?—A. I did.

Q. Was there any conversation with him whether, for the period of a few months, he acted as foreman of the gang of the stone cutters?—A. There was; and he informed me that he had acted as foreman in certain instances.

Q. Was there any conversation with Mr. Rossi as to whether he had worked on any other job with Frank Laudani, and whether they knew each other before this particular work?—A. I believe that we did have some conversation to that effect. My impression is now that he told me that he had known Laudani before he went to work on that particular job.

Q. And I believe you testified that he categorically denied that he received any kick-back money from the workmen on this job.—A. He did deny that.

Q. Was there any conversation with Mr. Rossi whether he ever paid any kick-back money while so employed?—A. There was.

Q. What did he say?—A. He denied that he had ever made any kick-back payments.

Q. Was there any conversation with Mr. Alfredo Rossi whether he had any knowledge of any kick-back money being paid on this job?—A. There was; and he denied also, in that connection, that he had any knowledge of any kick-back payments being made by any workman on the project.

Q. Did you have any conversation with Rossi whether he heard that any workmen were paying kick-back money?—A. I did; and he denied that he ever heard any kick-back money was being paid on this particular project.

190a Q. Did you have an interview with one Anthony Martello?—A. I did.

Q. Did you interview Gaetano DeCesare?—A. I did.

Q. Did you interview Rocco Pedevillano?—A. I did.

Q. Did you interview Matteo Viaggio?—A. I did.

Q. Now, when you interviewed these different people, that is, namely, Frank Laudani, Alfredo Rossi, Matteo Viaggio, Anthony Martello and Gaetano DeCesare, did you reduce their conversation had with you to a sworn statement?

* * * * *

Mr. STANZIALE. All right, I withdraw the question.

By Mr. STANZIALE:

Q. Did you reduce to writing the statement of Frank Laudani and Alfredo Rossi?—A. I did.

Q. Was that statement signed in your presence?—A. It was. Both of them.

Q. Both statements?—A. Yes, sir.

Mr. STANZIALE. Is there any objection to them going into evidence?

Mr. SIMANDL. I don't know. I have never seen them.

By the COURT:

Q. Did you warn them of their constitutional rights?—A. Yes, I believe we did; and I think the statement recites that the statement was taken without any threats, or promises, or reward. It is the usual statement we take.

The COURT. You warned them of their rights and that it would be used against them.

191a By Mr. STANZIALE:

Q. I show you a statement of Frank Laudani. There appears the name of Frank Laudani, witnessed on the 7th day of February 1939, in the presence of Steven Sarrapede and Maurice Fitzgerald. Now, is that the statement that was signed in your presence by Frank Laudani?—A. Yes, sir.

Q. I refer now to the statement of Alfredo Rossi bearing the date of the 3rd of February 1939, and witnessed in the presence of Steven S. Sarrapede and Maurice Fitzgerald; with the name Alfred Rossi. Is that the signature and the one signed by Alfredo Rossi in your presence?—A. It is.

The COURT. Mr. Simandl, do you want to cross examine the witness about the facts and circumstances surrounding the statements?

Mr. SIMANDL. If the Court please, if I look at the statements I may have no objection. I have never seen it. The witness has indicated that it was taken from Mr. Laudani voluntarily. As far as I know, I don't think any force was exerted or anything of that sort.

By Mr. STANZIALE:

Q. Mr. Sarrapede, I am now showing you Government Exhibit G-10, which we will call payroll No. 1, and I am exhibiting to you Government Exhibit G-11, which we will call pay roll No. 2. These two exhibits are in evidence. I want you to look at the exhibits and tell us if you have ever seen these exhibits before; and if you have, what you did with the same.

* * * * * *

192a By Mr. STANZIALE:

Q. Now, Mr. Witness, what is Government's Exhibit G-10 and G-11 that you have in your hand?—A. Government exhibits G-10 and G-11 appear to be original payrolls submitted to the resident engineer of the Public Works Administration, or to the Port of New York Authority; and then submitted to the resident engineer by the Cape Ann Granite Company and which reflects the hours of work, names of employees, and which appears to reflect the names of individuals employed on contracts MHT5-B and MHT9, on the Lincoln Tunnel project.

Q. Which is the subject matter, Mr. Sarrapede, of Government Exhibit G-6, which is the contract between the Port of New York Authority; and Government Exhibit G-7, which is the subject of the contract between the Port of New York Authority and the Brewster Company; and G-8 in evidence, which is the subject matter of the sub-contract, between the George M. Brewster Company and the Cape Ann Granite Company; and Exhibit G-9, which is the subject of a contract, or a supplemental contract, between the George M. Brewster Company and the Cape Ann Granite Company.

Mr. SIMANDL. I object, if the Court please. That is asking this witness——

The COURT. What was the particular thing you wanted to ask of the witness on the stand?

Mr. STANZIALE. Whether the payroll that he has on hand is the one reflecting the employees who worked under the contract which is the subject matter, for this particular work on the Lincoln Tunnel, during that period of time.

The COURT. Will you qualify this witness, then?

Mr. STANZIALE. All right. I withdraw that for the time being.

193a By Mr. STANZIALE:

Q. During the course of your investigation, Mr. Sarrapede, did you have occasion to look at Government Exhibit G-6 and Government Exhibit G-7, which are the two contracts of the

Port of New York Authority and the George M. Brewster Company?—A. I did.

Q. During the course of your examination and investigation in relation to this case, did you have occasion to look into the contracts G-8 and G-10, which is the subject of the sub-contract between the George M. Brewster Company and the Cape Ann Granite Company?—A. I did.

Q. And in relation thereto, did you examine the pay roll for the particular work which is specified under those two contracts?

Mr. SIMANDL. Now, if the Court please, he is asking for a conclusion.

The COURT. He can answer that, Mr. Simandl, if he did do it.

Q. Did you?—A. I did.

Q. Now, what did your examination consist of in looking into the pay roll?

Mr. SIMANDL. I object, if the Court please.

The COURT. No, he is still perfectly in safe water. Go ahead. We will give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

194a The WITNESS. My examination consisted of noting the names of the employees of the Cape Ann Granite Company indicated on said pay rolls, the hours worked each day by those employees, the total wages which they were indicated to have received on those pay rolls and the certification of the Cape Ann Granite Company by the appropriate officer on the reverse side of the pay rolls.

By Mr. STANZIALE:

Q. Now, I am directing your attention, Mr. Sarrapede, to the certification that appears on the reverse side of the pay roll as those wages having been paid to the workmen. Will you look at that certification?—A. Yes, sir. Any one?

Q. Any one.—A. All right.

Q. What name appears thereon?—A. I believe it is Arthur J. White.

Q. And what position did Mr. White hold with the Cape Ann Granite Company?—A. He is indicated herein to hold the position of treasurer with the Cape Ann Granite Company.

Q. What does the certification certify?—A. May I read it?

Q. Yes.—A. [Reading] "State of New York, County of New York. I, Arthur J. White, treasurer, do hereby certify that I am the employee of the Cape Ann Granite Company, Inc., who super-

vised the payment of the employees of said employer. That the pay roll on the reverse hereof is a true and accurate report of the full weekly wages due and paid to each person employed by the said employer for the construction of the Lincoln Tunnel, 228, New York, for the weekly pay roll period, from the 18th day of March 1938, to the 24th day of March 1938; that no rebates or deductions from any wages due any such person as set out on
1951 the pay roll on the reverse hereof, have been directly or indirectly made, and that to the best of my knowledge and belief there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat, induce or receive any deductions or rebates in any manner whatsoever, from any sum paid to any person at any time for labor performed, or to be performed, under the contract of the above named project. Sworn to and subscribed to before me, this 20th day of March 1938." Arthur J. White, is the signature. Then there is the stamp of the notary public on this particular affidavit.

Q. Now, Mr. Sarrapede, does that certification appear for the entire pay roll, from the 1st of January 1937, or thereabouts, to the time that the project was completed?—A. I believe it was a requirement.

Q. Now, Mr. Sarrapede, I direct your attention to the pay roll of Sante Spatola.—A. Any one?

Q. From that pay roll, Mr. Sarrapede, did you make a recapitulation in regard to Sante Spatola, from the time that he worked on this project, noting the full hours that he worked on this project, and noting the full amount of pay that he received?—A. I did.

Q. Will you refer to that, sir?—A. Yes, sir.

Q. That was done in your own handwriting, Mr. Sarrapede?—A. Yes, and then subsequently typed.

Q. And it appears thereon, Mr. Sarrapede?—A. It does.

Q. Now, Mr. Sarrapede, from an examination of the pay roll, can you tell this jury over how long a period of time Mr. Sante Spatola worked on this project?

Mr. SIMANDL. If the Court please, I submit the records speak for themselves; and I don't think that this witness has a right to testify to anything that is obviously calculable from the records. It is my understanding that that is the rule.

1952 The COURT. Well, Mr. Simandl, that may be true; but here is a great mass of papers, and we could not expect the jury to know very much about it, unless someone who has examined those papers points out certain features of the contents that relate to the case on hand. They won't be bound by what is pointed

out to them by either side, because they are in evidence; and they can take the papers out with them and use them for any purpose they think proper; but it would be almost unintelligible just to hand these records over to the jury and say, "Dig this out for yourselves." They could not do that.

I do think, though, that this witness ought to be interrogated about his previous experience and his ability to do this kind of work. He said he was an investigator. You might bring out something of his training, if you will.

By Mr. STANZIALE:

Q. Mr. Sarrapede, I believe you testified that you were connected with this P. W. A. as a special investigator from 1934 to 1939?—A. That is right.

Q. A period over five years?—A. Yes, it really went to 1940, November of 1940.

Q. Six years?—A. Yes.

Q. And during the period of six years employment with the P. W. A. did you have occasion to investigate other cases, other than these?—A. Yes, many occasions.

Q. Many occasions?—A. Yes.

Q. Can you tell us in your six years experience or connection with the P. W. A. how many investigations you were either directly or indirectly connected with?

Mr. SIMANDL. If this gentleman has had experience as an auditor, I have no objection to his testifying.

197a THE COURT. Do you consider that he is qualified to make an analysis?

Mr. SIMANDL. If he has experience as an auditor.

Mr. STANZIALE. I will come to that. Suppose I ask these questions. I got along pretty well for six years without Mr. Simandl's help, and I think I can do that now.

By Mr. STANZIALE:

Q. During the course of your investigation, Mr. Sarrapede, did you have occasion to examine books and records?—A. Yes, many occasions.

Q. And during your examination of records, did you make or digest books and records ascertaining figures in relation to your examination?—A. I did.

Q. Tell us something about how you went about, and how you did it, in your six years experience.—A. Many of the cases which I investigated were pay roll cases similar to this particular case; and it was not difficult at all to multiply and add. I learned to multiply and add a long time ago, before I became an investigator. There wasn't anything particularly difficult about the computations.

Q. And in reference to this particular computation, was it a question of adding each weekly pay roll, over the period of time that the person was working, and ascertaining the hours that the man worked?—A. That is right.

Q. And was that what was done in this case?—A. That is right.

Q. Did you do that in relation to every other person concerned directly or indirectly with this case?—A. I did.

Q. Was it a question of adding?—A. That is right.

Q. It was?—A. Adding and multiplying.

Q. And you have been doing that for the last six years?—A. Well, not——

198a Q. I mean in connection with your official duties as a Government agent.—A. That is right.

Q. Now, then, you were connected with the P. W. A. in 1934. Can you tell us what you were doing?—A. Yes, this investigating work constitutes practically my only employment. I graduated from law school in 1932, with the Degree of Bachelor of Laws.

Q. From what law school did you graduate?—A. Fordham Law School.

Q. Fordham?—A. Yes.

Q. And then, two years after you were graduated with the Degree of Bachelor of Laws, you were engaged by the Government?—A. That is right.

Q. Are there any special qualifications necessary to take a position with the P. W. A.?—A. No, but I believe the law degree entered into the final employment that was given.

Q. All right. Now, tell us——

Mr. SIMANDL. I don't know whether your Honor understands the nature of my objection. If the thing is easily obtainable, as they are, by adding: I assume that there are ladies and gentlemen on the jury that can add and subtract as he can. If the matter was so complicated that it required the experience of experts, then we would resort to experts. We only resort to experts when that necessity arises.

That is not the purpose of this testimony. He is not trying to prove that. Mr. Spatola testified he started to work in September; and what they are trying to do is show that he worked there before he said that he worked there. That is all this is for.

* * * * *

Mr. SIMANDL. That is what I am coming to, Judge. Sante Spatola's indictment mentions four dates, that's all.

199a THE COURT. Yes.

Mr. SIMANDL. What he wants to do is make this operation look like a gigantic proposition, by having this done on the stand; and I might just as well tell the jury what their purpose is. By having this gentleman on the stand testify, they want to show that over a period of so many years Mr. Sante Spatola obtained so much money; and if his testimony is correct, that during that time he is supposed to have gotten a certain percentage and that that adds up to a tremendous figure, and from that he wants to argue what a tremendous amount of money is involved in this case.

I say to the Court that that is exactly why I am objecting. He has been charged in this indictment for four offenses, on four specific dates named in this indictment—and I think I am right when I say $8.21, $10.33, $12.23, and $11.38.

Now, it is a relatively easy thing for this gentleman to turn to the payroll of that week, or those weeks and say that Mr. Spatola worked for this week or that week; and the answer can be, yes, he worked according to these payrolls. But that is not what he wants to do; and I know it is not.

I submit that this Court should not permit him to do what he wants to do, that is, to place in this case an entirely different issue than what these men are here to defend.

The COURT. You refer to Mr. Spatola's testimony. Do you feel that there are other instances of that kind that come under the same principle?

Mr. SIMANDL. Every one of the witnesses mentions a few days. For instance, Mr. Campo is mentioned on four dates in the four counts of the indictment. Then he goes to the others. I
200a submit, to try to work out conclusions will place on this case an entirely different aspect than what we are trying. I submit that it is not only unfair but strictly improper.

* * * * *

The COURT. I will overrule the objection of the defendants and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

* * * * *

The COURT. I am going to ask you a question to make sure that I get your point.

I am going to take Count 2 on this bill of indictment, 10-C. I am going to pick one out at random. It states there that the Grand Jurors charge that these defendants wilfully, unlawfully, and feloniously, and by intimidation, threats of dismissal, and

by giving to understand that all persons employed on such work would be required to give to and for the said defendants part of their true wages so long as they were employed, did induce one Anthony Lasorsa—he appeared on the stand—to give to the said Frank Laudani and the defendants, the sum of $4.90, a part of the compensation of $26.40, to which the said Anthony Lasorsa was entitled as a stone mason for work and labor performed on such public work for the week ending October 13, 1937.

Now, Mr. Simandl, your point is this; that with reference to Mr. Lasorsa the Government is precluded from giving any
201a testimony as to any amounts and dates except those mentioned in that count, is that right?

Mr. SIMANDL. That is correct.

The COURT. Well, you certainly would be hog-tying the Government in a way that I don't think, in the years of my experience was certainly intended.

* * * * *

The COURT. I can't quite follow your in your restrictive interpretation of procedure in a case of this kind.

I will overrule the objection.

I have great respect for your opinion; but I tried so many of these cases where these principles were involved, when I was in the prosecuting office, and that was the procedure.

Now, is there any way that we can simplify this for the benefit of the jury?

Mr. STANZIALE. Yes.

The COURT. I will give you an exception, Mr. Simandl.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

By Mr. STANZIALE:

Q. What is the total of hours that Mr. Spatola worked for the Cape Ann Granite Company, solely in connection with the Lincoln Tunnel?

The COURT. Mr. Simandl's objection will go to every bit of testimony along this line. It is not necessary for him to feel under obligation to formally put his objection on the record. I
202a wish to state that he gets the benefit of an objection throughout the examination on this line.

The WITNESS. My conclusions indicated that Spatola had worked 916½ hours during the course of his employment on that job.

Q. That is from when to when?—A. That is from the week ending January 13, 1937, to the week ending December 18, 1937.

Q. Take Joseph Faillace.

The COURT. Now, you are restricting these to the people in the indictment.

Mr. STANZIALE. Yes, just to the people in the indictment.

The WITNESS. Yes, sir.

By Mr. STANZIALE:

Q. How many hours, from when to when?—A. My conclusions indicate that during the period from the week ending August 4, 1937, to the week ending December 29, 1937, Joseph Faillace worked 568 hours.

Q. Giuseppe Campo?—A. My conclusions indicate with respect to Giuseppe Campo, that during the period from the week ending September 1, 1937, to the week ending March 2, 1938, he worked 567 hours.

Q. How much?—A. 567.

Q. Anthony Lasorsa?—A. My computations with respect to Anthony Lasorsa indicate that during the period from the week ending October 6, 1937, to December 15, 1937, he worked a total of 181 hours.

Q. Alfio Tomasello?

Mr. SIMANDL. Tomasello was excluded, as I understood it.

203a Mr. STANZIALE. No, he testified. He is named in one of the indictments.

Mr. SIMANDL. He did not testify.

Mr. STANZIALE. Oh, yes, he did.

The COURT. Yes, he testified. He was the one here this morning.

The WITNESS. My computations indicate that during the period from the week ending January 13, 1937 to the week ending December 8, 1937, Alfio Tomasello worked a total of 872½ hours.

Q. 872½ hours?—A. Yes.

Mr. STANZIALE. Now, with reference to Antonio Siggia, if I am wrong, correct me; I believe the testimony is that Mr. Liotta said he took the money from Mr. Siggia.

Mr. SIMANDL. I object.

The COURT. Mr. Simandl objects to his reference.

Mr. STANZIALE. That is right, but I called Vincenzo Liotta, and he testified that he took money from Siggia to Laudani.

Mr. SIMANDL. That was excluded, if the Court please, and definitely so.

Mr. STANZIALE. I don't think so.

The COURT. It was.

By Mr. STANZIALE:

Q. Now, Mr. Sarrapede, that covers the particular persons as named in different counts of this indictment, does it not?—A. It covers some of them, I believe.

Q. Some of them?—A. Yes.

Q. Now, did you, Mr. Sarrapede, make a computation as far as Sante Spatola is concerned, on the basis of his testimony, that he kicked back 25 cents an hour?

204a Mr. SIMANDL. I object to that. That is what I have been complaining about here.

The COURT. Wait a minute. I was making a notation, and I didn't hear it.

Will you read the question to me, Mr. Stenographer?

Q. (The pending question was read by the reporter.)

The COURT. We will leave that computation to the jury.

Objection sustained.

In your arguments both sides can give your recollections on it. That is not for this witness.

Anything more?

Mr. STANZIALE. That is all.

The COURT. Are you ready to cross examine, Mr. Simandl?

Mr. SIMANDL. No questions.

* * * * *

NEWARK, N. J.,
Wednesday, March 11, 1942.

(Trial resumed pursuant to adjournment.)

(Appearances as before noted.)

Mr. STANZIALE. Your Honor, if Mr. Simandl has no objection, I will offer the statements in evidence. These are the statements of Frank Laudani and Alfredo Rossi.

Mr. SIMANDL. No objection, if the Court please.

The COURT. They will be admitted.

(The statements referred to were received in evidence and marked Exhibits G-12 and G-13.)

Mr. SIMANDL. I would like to ask Mr. Sarrapede a number of questions on cross-examination.

The COURT. All right.

205a S. S. SARRAPEDE, resumed the stand.

Cross-examination by Mr. SIMANDL:

Q. Mr. Sarrapede, the interview with Mr. Laudani took about how long?—A. Well, I can't be certain about it. It was back in 1939. It may have taken over an hour.

Q. I see. And this exhibit, G-12, is a summary of the conversation had with him, is it not?—A. That is right.

Q. He told you about Mazzola, didn't he?—A. I do not seem to recall that he did.

Q. Didn't he tell you at length of the activities of Mazzola and the fact that Mazzola had attempted to get him, or words to that effect?—A. He made some reference to a union, but I don't know whether he specifically mentioned Mazzola.

Q. He said that there was a fight down there in the union?—A. I think that he did, yes.

Q. Now, he also told you, did he not, that these amounts that he loaned were amounts where the workmen asked for a dollar or two, or some small amount, until the next day, or until pay day?—A. Yes, I believe that is so.

Q. And he was asked whether he could estimate whether it was $5,000 or $1,000 or $500, and he gave you an estimate of what these little amounts amounted to, and over a period of time that he worked on the job, isn't that so?—A. Yes, sir.

Q. And he told you that the men generally paid him back either the next day or a couple of days after, and therefore he kept no record?—A. Yes, sir.

Q. He came to your establishment, at your request; that is, to the Sub-Treasury Building voluntarily?—A. Absolutely.

Q. And that applies as well to Mr. Rossi?—A. Yes, sir.

Q. How long did the interview with Mr. Rossi take?
206a Your interview with him was for how long?—A. Probably the same period of time. It may have taken a little longer, due to the fact that the other statement had to be typed, and they probably waited around until they were typed.

Q. And with respect to Rossi, this was a summary of your interview with him?—A. Yes, sir.

Mr. SIMANDL. No further questions.

Mr. STANZIALE. With your permission may I read the statements to the jury?

The COURT. Yes.

Mr. STANZIALE. I am reading the statement of Frank Laudani marked as Exhibit G-12.

(Mr. Stanziale read Exhibit G-12 to the jury.)

Mr. STANZIALE. I am now reading the affidavit of Alfredo Rossi which is Government's Exhibit G-13.

(Mr. Stanziale read Exhbit G-13 to the jury.)

Mr. STANZIALE. If your Honor please, at this time the Government rests.

(The Government rested.)

Colloquy

Mr. SIMANDL. I have a long series of motions that I would like to make if the Court please.

The COURT. All right. Do you want the jury excused?

Mr. SIMANDL. I think so, if the Court please.

* * * * *

Mr. SIMANDL. If the Court please, I think first that we ought to clear up the respective counts in the indictment so that we know

right away what we are facing. The Government has not
207a proven the first, sixth and seventh counts of the indictment 7-C, and I think that Mr. Stanziale——

Mr. STANZIALE. Let's start from the first one.

Mr. SIMANDL. That involves the man Roberti.

Mr. STANZIALE. That is right.

Mr. SIMANDL. Roberti has not been on the stand.

The COURT. I don't remember anything about Roberti either.

Mr. STANZIALE. This is indictment 7-C.

Mr. SIMANDL. Yes.

Mr. STANZIALE. The first count consent.

The COURT. What is that?

Mr. STANZIALE. Consent.

The COURT. Is that Count No. 1?

Mr. SIMANDL. Count No. 1 of Indictment 7-C.

The COURT. Indictment 7-C. What counts are you calling attention to?

Mr. SIMANDL. Counts 1, 6 and 7. Those are the counts that involve Roberti.

Mr. STANZIALE. Consent on 1; consent on 6; and consent on 7. Consent to dismissal.

Mr. SIMANDL. Yes, they are out then.

* * * * *

Motion for a Directed Verdict of Acquittal

Now, if the Court please, I move for a directed verdict of acquittal in behalf of both the defendants upon the following grounds: First, I move for a directed verdict upon the ground that the indictments and the respective counts thereof are insufficient, and no proper judgment can be entered thereon, for the reasons stated in the motion to quash made by the defendants before the plea of not guilty was entered. I ask, however, that the
208a Court consider this motion as if I had spread those reasons upon the record with the same particularity as I did when the motion to quash was made.

I move for a directed verdict of acquittal on behalf of both defendants upon the ground that there is not sufficient proof of the material allegations of the indictment to warrant the submission of this case to the decision of a jury.

Third, I move for a directed verdict upon the ground that the evidence in this case is as consistent with innocence as with guilt, and, therefore, under the law, it is the Court's duty to direct a verdict of acquittal.

Fourth, the evidence in this case fails to establish a violation of the provisions of the statute under which the indictments were laid; and therefore, there should be a directed verdict.

Fifth, to permit a conviction under the state of proof as it now is before this Court, would be to permit an unconstitutional enforcement and operation of that statute.

Those, sir, are the grounds that I set forth.

* * * * * *

I am going to overrule your motion and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

* * * * * *

NEWARK, N. J.,
Thursday, March 12, 1942.

* * * * * *

Mr. STANZIALE. The Judge has already ruled, Mr. Simandl.

209a Mr. SIMANDL: He has not ruled on this. I am sure he has not; and I am not taking up his time with respect to anything else.

If the Court please, there is a serious variance; a serious material variance, between the allegations contained in the respective counts of the respective indictments and the proof offered in support thereof.

The COURT. Are you referring to any particular indictment, Mr. Simandl?

Mr. SIMANDL: I am referring to each of the indictments and the several counts thereof. However, for the purpose of simplicity and expediency, perhaps, we might take Indictment S-C, because that names only one man; that has one employee.

The COURT. And the same principle will apply in all the others?

Mr. SIMANDL. All the others; that is right.

The COURT. All right.

* * * * * *

Mr. SIMANDL. Now, what I say is that they have not laid this in their indictment as a continuing offense; but what they have done is they have either proven one single offense there, whether you adopt the theory that it is a continuing threat, or whether you adopt the theory as the proof allegedly shows, that there was but one threat, and that as a result of that a man kept on paying him money.

The COURT. Now you are referring to Campo?

Mr. SIMANDL. It is in every instance, if the Court please.

* * * * * *

The Court. I will overrule the motion, Mr. Simandl, at
210a this time, and give you an exception on behalf of both defendants. Are you sure that the record is now in shape?
(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Have you made your motion so that I can rule upon it?

Mr. SIMANDL. Yes, as to this particular motion; yes. I will reserve my other motions.

The COURT. I hope that motion is in proper form on the record. If it is not, we will put it in the proper form.

Mr. SIMANDL. I am sure that it is.

The COURT. Certainly we have the substance of it.

Mr. SIMANDL. Yes.

I note an exception to the denial of your Honor to my motion.
(Which exception is hereby allowed and sealed accordingly.).

GUY L. FAKE,
U. S. D. J.

(Following a short recess at this point, the trial was resumed as follows:)

(The jury returned into the court-room.)

* * * * *

JOSEPH V. CALTAGIRONI, called and sworn for the defendants, testified as follows:

Direct examination by Mr. SIMANDL:

Q. Doctor, you are a physician practicing medicine in the State of New York?—A. I am.

Q. How long have you been a physician?—A. Since 1924.

211a Q. Do you know the defendant Frank Laudani?—A. I knew of him prior to 1928, and I have known him very intimately since 1928.

By the COURT:

Q. 1928, Doctor?—A. Yes, your Honor.

By Mr. SIMANDL:

Q. Do you know his friends?—A. I know practically all of his friends.

Q. And do you know, or have you had occasion to visit his home?—A. I have been his personal physician and physician for his family since 1928.

Q. Do you live in the same general community where he lives—A. I do; very close to an organization of which he is a member and has been president on several occasions.

Q. What type of work?—A. Mutual Aid Society with benefits, sick benefits and death benefits.

Q. What are the type of people that belong to this Mutual Aid Society?—A. There are masons, carpenters, shoe manufacturers, shoemakers, and employees in different trades—barbers.

Q. Are there professional men in the association?—A. There have been professional men, attorneys.

Q. Can you tell us, Doctor, or do you know, what his reputation is for being a peaceful, law-abiding citizen?—A. His reputation is excellent. He has been asked on many occasions to head the organization and he has refused, because he has been the president three times and has asked to give someone else a chance. He was president in 1928. He was president in 1936. He was president in 1926, before my days.

Mr. SIMANDL. That is all, Doctor.

Mr. STANZIALE. No questions.

The COURT. That is all, Doctor. Thank you.

212a JOSEPH B. LAMMANA, called and sworn for the defendants, testified as follows:

Direct examination by Mr. SIMANDL:

Q. Mr. Lammana, you are a member of the bar of the State of New York?—A. I am.

Q. You are not in any way connected with the trial of this case, are you?—A. I am not.

Q. And previous to this date, did you and I ever meet?—A. No.

Q. Do you know Mr. Laudani, the defendant?—A. Yes. I have known Mr. Laudani for approximately twenty years.

Q. Do you know any official position that he may have held during the time that you have known him?—A. Yes; in the early 20's he was an interpreter in the municipal court of Brooklyn, the City of New York.

Q. Do you have occasion to know his friends and acquaintances?—A. Yes; I know most of his friends. As a matter of fact, he and I belonged to a business club. It has been established in that neighborhood for over twenty years; and I know that his reputation in the club is excellent; and in the community he enjoys an excellent reputation. He has been offered the presidency of the club on a number of occasions and has refused to take it because of his other business activities.

Q. Have you had occasion to visit his home?—A. Yes; I have been at his home a number of times.

Q. Is it a home of modest circumstances?

Mr. STANZIALE. That is objected to.

Q. Can you tell us his reputation in the community for being a peaceful, law-abiding citizen?—A. He enjoys an excellent reputation for being a peaceful and law-abiding citizen; and
213a I might add that during the years that he was an interpreter in the court he was well liked by all the judges and all the employees in the entire municipal court. Especially the members of the bar thought very highly of Mr. Laudani.

Mr. SIMANDL. That is all.

ALFREDO ROSSI, one of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. SIMANDL:

Q. Mr. Rossi, how old are you?—A. 55.

Q. Now, may I ask you to just turn around a little bit toward the jury and speak up so that every party on that jury can hear you? Are you married?—A. Yes, sir.

Q. How many children have you?—A. Seven.

Q. At present where do you live?—A. 773 Park Avenue, Brooklyn.

Q. Did you always live in Brooklyn?—A. About four years.

Q. Prior to that time where did you live?—A. In New York.

Q. And then where, before you live in New York?—A. Trenton, New Jersey.

Q. And how long did you live in Trenton?—A. Seventeen or eighteen years.

Q. Now, what is your business?—A. Stone cutter.

Q. How long have you been a stone cutter?—A. When I first started to work about eleven or twelve years of age on the other side.

Q. Are you a member of a union?—A. Yes, sir.

Q. What union, sir?—A. Local 47; Brooklyn.

Q. Are you an officer of that union?—A. No, sir.

214a Q. Now, during the year 1937 and part of the year 1938, did you work on a job over at the Lincoln Tunnel on the Jersey side for the Cape Ann Granite Company?—A. Yes, sir.

Q. What did you do there?—A. Cut the stone.

Q. How did you obtain your job?—A. I asked Frank Laudani. He was the foreman of that job.

Q. And how much were you paid an hour?—A. $1.50 an hour till June of the next year, the following year till June, and the rest $1.88½.

Q. Now, Mr. Rossi, did Frank Laudani ever ask you to collect from other employees on that job any money from any men working for the Cape Ann Granite Company?—A. No, sir.

Q. Or to induce them by force, intimidation, threatening them with dismissal from employment, or by any other way to give back or kick back any moneys which they were paid or earned on that job?—A. No, sir.

Q. Did you ask any one of those men to collect for you any such money?—A. Never.

Q. Did you ask anyone else to collect such money for Laudani?—A. Never.

Q. Did you collect any money of that character?—A. No, sir.

Q. Did you turn any such money over to Frank Laudani?—A. No, sir.

Q. Do you know Mr. Spatola who testified here?—A. Yes, sir.

Q. He claims here, he testified that you were going over the ferry one day, and that you told him that he had to pay back 25 cents an hour, and that he gave the money to you.—A. No, sir.

Q. He says that afterwards you asked him to pay you 35 cents an hour, and that he subsequently paid that money to you.—A. Never in my life.

215a Q. A witness by the name of Failface says that he gave such money to you.—A. I never knew the man.

Q. What do you mean by that, that you never knew the man?—Will you explain that, please?—A. Because he worked in one gang and I worked in another gang.

Q. Did you know the man at all on the job?—A. No, sir.

Q. Tomasello said that he paid such money to you. Did you ever receive any such money from him?—A. Never in my life. him?—A. Never in my life.

Q. Campo says that he paid you at the wall.—A. I knew the man after he worked about two or three months over there. I never met him before.

Q. Did you have any conversation at all with Mr. Campo?—A. No, sir.

Q. What was his work?—A. Stone setter.

Q. Where does a stone setter, normally work?—A. On top of the scaffold.

Q. Where did you do your type of work?—A. On the ground.

Q. And how high were the scaffolds, generally?—A. Well, they start from the ground. Build a scaffold from three or four or five feet, and go all the way to the top.

Q. How high is the top?—A. About 75 or 80 feet high.

Q. Now, ordinarily where does the stone cutter work as regards to the wall which is being erected?—A. Well, sometimes 100 foot, and sometimes 500 foot, or 1,500 foot away from the wall.

Q. Now, DeCesare says that you spoke to him and asked him to get the money from Lamastra and Lasorsa, is that true?—A. No, sir.

Q. He says that thereafter he paid you.—A. Never did.

Q. Do you know Mr. Mazzola?—A. Yes, sir.

Q. How long have you known him?—A. Well, since he come in 47.

Q. That is the local you belong to?—A. Yes, sir.

216a Q. Where was he previously a member?—A. 78.

Q. Who was business agent for Local 47, the one union that you belonged to, during that job?—A. Mr. Mazzola.

Q. Were there only men from 47 working on that job?—A. Plenty.

Q. I say, were there men other than 47 working on that job?—A. Other union men; yes, sir.

Q. What other unions?—A. Men from Local 39 of New Jersey, and men from 78, New York.

Q. Who were the business agents, if you know, of the Locals 39 and 78?—A. Well, I know the name of delegate from 78 was Colasanti.

Q. Did you know the name of the business agent?—A. We called him Charlie, from No. 39; but I don't know his second name.

Q. Now, do you remember an election between Mr. Mazzola and Mr. Laudani to the convention?—A. Yes, sir.

Mr. STANZIALE. Just a minute, sir. If your Honor please, at this time I want to object to this line of testimony.

The COURT. Now, I don't know how far we should go into this; because we don't want to go into a labor dispute. We don't want to go into this except to show motive or purpose of prosecution.

Mr. SIMANDL. That is the purpose of it.

* * * * * *

By Mr. SIMANDL:

Q. What was the answer?—A. Yes, sir.

Q. What was the nature of the election? Just briefly tell me what the office was for?—A. To elect a delegate to go to the state convention.

Q. When was the election?—A. In July, I think.

217a Q. What year?—A. 1937, 1938, I don't know.

Q. Well, was it 1937 or was it 1938?—A. 1938.

Q. 1938?—A. Yes, sir.

Q. And who won that election?—A. Well, we elect Frank Laudani.

Q. Now, was there a subsequent election involving another delegate?—A. To go to Milwaukee.

Q. And when was that, in September of the same year?—A. Yes, sir.

Q. And who won that?—A. Laudani.

Q. And was there a subsequent election between Mr. Laudani and Mr. Mazzola that same year?—A. Yes, sir.

Q. When?—A. In November.

Q. November of what year?—A. The same year.

Q. That was for delegate business agent of the union, is that right?—A. Yes, sir.

Q. Did you speak to Mr. Mazzola after this last election?—A. Yes, sir.

Q. What did he say to you?

Mr. STANZIALE. Objected to. How can Mr. Mazzola himself put in motion, if your Honor please, the arms of the United States Government? How does this man Mazzola rise to such great heights that he has put in motion a prosecution against these two men involving the kick-back of pay that they received on this particular job? How is that? How is his statement binding upon the Government that he put in motion this prosecution?

The COURT. The witnesses have all been asked about Mazzola and they have denied that Mazzola had anything to do with it.

Mr. SIMANDL. They did not deny that at all.

The COURT. Now, you are asking him what did Mazzola tell him? That is clearly a violation of the rules of evidence. That is hearsay.

218a Mr. SIMANDL. I am going to connect it up.

The COURT. You can't connect it up that way. If you want to, call Mr. Mazzola and ask him.

Mr. SIMANDL. Mr. Mazzola is pictured before this court and by this witness Spatola, whom I forced to admit, that this man was responsible for this prosecution. Now, I propose to offer by this witness testimony which will connect Mr. Mazzola going to Mr. Sarrapede. It was Mr. Mazzola who sent Mr. Sarrapede to this man, and I will prove threats by Mr. Mazzola shortly before that occurrence. I will also prove, by this witness, that this man knows definitely that these men who testified on the stand were henchmen, suppressed and disappointed friends of Mr. Mazzola.

That is all motive.

The COURT. Yes, motive; but Mr. Mazzola is not in this case. The Government has not called Mr. Mazzola. If these prosecuting witnesses who have appeared have any motive for coming in here and testifying falsely, you would have a perfect right to show that.

Mr. SIMANDL. That is what we are trying to prove right this moment.

The COURT. But you can't prove it by this gentleman, by saying Mr. Mazzola, who has not been called, and who is a defeated

candidate of the union, has caused the United States Government to bring this prosecution.

Mr. SIMANDL. This man, if the Court please, was a figure in this local. He commanded every situation. He was the man whom they supported. In heat, after this battle, they made the statements and they made them because of anger, how they felt toward Laudani.

219a If the Court please, we have a right to show those circumstances; and in order that the jury may properly draw the proper inference that these men are actuated by labor motives in coming here and testifying as they did do. We have a right to show motive.

The COURT. I am leaving the door very wide for you to show motive, but for this gentleman on the stand to tell what a man not called on the witness stand, an outsider entirely, as a member of the union and involved in the union fight, would violate the hearsay rule.

Mr. SIMANDL. The hearsay rule? He spoke to this man.

The COURT. That is all right.

Mr. SIMANDL. This man is entitled to tell what someone said or did to him. I can only, as Mr. Stanziale said, prove my case one step at a time. If this evidence is improper, your Honor will have a right to strike out all of it; but I ask, if the Court please, an opportunity. I have been on my defense exactly a half hour, and I would like to complete it within the hour. That certainly is not taking too much time.

The COURT. You won't have any time clock put on you, but I can't see the propriety. I say it would be highly improper to drag a red herring across this trail——

Mr. SIMANDL. I must ask for a mistrial.

The COURT. —for you to attempt to violate the hearsay rules.

Mr. SIMANDL. I am not violating the hearsay rules.

The COURT. I won't discuss it. I will rule against you and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

220a Mr. SIMANDL. Your Honor has criticized, in the presence of the jury, my bona fide attempt to show a motive on the part of these witnesses by proper evidence as a "red herring"; and I submit, if the Court please, after the Court's definite statement of that kind, it is impossible——

The COURT. I will repeat it. For me to permit evidence of this kind with reference to threats by Mazzola has no place in this case; and as to a labor candidate for office to be thrown in this.

case would be a red herring across its trail, and it would be taking them from the main subject of their inquiry into something that they haven't anything to do with.

Mr. SIMANDL. I am now asking for a mistrial based upon your Honor's statement; and I ask your Honor to rule upon my application.

The COURT. I ruled upon it. I deny your request and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Mr. SIMANDL. I ask the Court to withdraw those remarks from the jury; and to ask that the jury disregard it.

The COURT. I will not withdraw the remarks from the jury, because it is my duty as presiding judge to state to this jury that if we permitted evidence of this kind you would be trying the merits of a union quarrel; and it would be highly improper for you to come to a conclusion of this case because of any feeling that may be aroused from a union dispute. I will also say to the jury, if there is any evidence produced at this trial that these
221a witnesses who have been called by the Government have acted out of malice, motive or revenge, and it impugns their testimony, you are to totally disregard this testimony and acquit these defendants when you come to conclude it.

Mr. SIMANDL. That is what I have tried to establish, if the Court please. I am trying to do it step by step. I want to make my offer to the Court. I intend to prove by the testimony of Mr. Rossi that Mr. Mazzola personally threatened Mr. Rossi and then said that he would fix Mr. Laudani as well as Mr. Rossi, within the space of less than a week or two that Mr. Sarrapede approached this man.

Mr. STANZIALE. Just a moment, Mr. Simandl, you are going off on a tangent, and you are testifying yourself. I object.

The COURT. Let him make his statement. Let's not get excited. This is a regular court proceeding and is going to be tried as such.

Mr. SIMANDL. Mr. Sarrapede approached this man, the Government agent who testified, and said that he had been sent to Mr. Rossi by Mr. Mazzola. We will show, by proof, that thereafter Mr. Mazzola, throughout the subsequent investigation, passed a resolution at each meeting; and we will show that there was but one single purpose which he had in mind and that was to break Frank Laudani.

Now, we want to show that that motive inspired by Mazzola, that these men in the spirit of revenge have come here to testify as they have, untruthfully against these men; and we submit that

we have a right under the law to offer that evidence; and that it is offered in good faith, in sincerity, and is no red herring as your Honor has depicted it.

223a Mr. STANZIALE. May I answer that, your Honor, for the records' sake?

Your Honor, without expressing any personal views on this matter—and I believe my personal views are very well known as far as the testimony is concerned—if Mr. Simandl has proof that any of the witnesses that I called, has made a statement to these defendants or any other person in connection with this case, or that their testimony was fixed or is fixed by something that a man by the name of Mazzola, whom I have characterized heretofore as the corn oil man, as far as I am concerned, then that testimony is admissible; but if the testimony only relates to what Mr. Mazzola has said, or any other person not called as a witness in this case, then I respectfully submit that the evidence is not admissible.

The COURT. I will overrule your motion, Mr. Simandl, and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U.S.D.J.

If you have any evidence to show that these men who testified are actuated by malice or motive, I will permit you to go to the limit to show everything in detail; but for you to have this gentleman on the stand to say what a man not called by the Government, someone out in a union who is supposed to have made some threats, why, it might be probably that these two defendants have enemies in the union, and many men might make threats against them.

223a Has anyone involved in this prosecution, and who has appeared on this stand, made any threats? If they have, you show it. I won't discuss it any more. I will overrule your motion and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U.S.D.J.

Mr. SIMANDL. Now, as I understand it, your Honor has prohibited me from asking any questions relating to this election and the result or the effect that that election had upon Mr. Mazzola and his constituents.

The COURT. Mr. Rossi is not permitted to testify as to any conversations that he had with Mr. Mazzola along the line of your motion.

Mr. SIMANDL. Oh, I made more than that. The question that was pending, I believe, was a question with respect to the election.

The COURT. Oh, no. You covered that. If you want to go to the election, go ahead. I am not shutting the door on that; but I am excluding any remarks made by Mr. Mazzola. The ruling goes no further than that; so that there is no doubt about it.

By Mr. SIMANDL:

Q. Do you know any of the members of Local 47 who testified at this trial?—A. Yes, sir.

Q. Who?—A. DeCesare, 47.

Q. Now, who of Local 78 testified here?—A. I don't know the name, because I never belonged to that union. I know a few.

Q. Was Spatola a member of Local 78?—A. Yes, sir.

Q. The Local with which Mazzola is personally connected?—A. Yes.

224a Q. —and was connected previously?—A. Yes, sir.

Q. What was the feeling between Mazzola and Laudani after this election?

The COURT. Wait a minute, Mr. SIMANDL, do you press that question?

Mr. SIMANDL. Well, I want the Court to rule on that.

The COURT. There is a conjecture and a conclusion at once. You see, I don't want to shut this door.

Mr. STANZIALE. I won't object. If he wants to ask it, all right.

Mr. SIMANDL. I tried to prove the state of mind by what people said, and your Honor has barred me from doing it. I am trying to prove the state of mind. I can't do it otherwise.

The COURT. If you will tie in these Government witnesses with Mazzola.

Mr. SIMANDL. You have said to many a jury in this court room that circumstantial evidence may be better than the spoken evidence. All I am trying to do is to build a set of circumstances from which this jury may logically draw the extreme inference. That is all I am asking.

The COURT. Yes. Just keep within the rules.

Mr. SIMANDL. Well, I am, if the Court please. I am doing it as carefully as I can. I went to the extent of writing out the questions in this case so that I might hasten this trial and help the Court get through with it.

The COURT. All right, just ask the question again.

By Mr. SIMANDL:

Q. After this election did Mr. Mazzola remain a member of Local 47?—A. No, sir.

225a Q. And when, after this election did you first learn of the fact that you were accused by anyone of having al-

legedly compelled workmen to kick-back?—A. When Mr. Sarrapede came to see me.

Q. And when was that, sir?—A. Well, I don't know. I don't recall. Maybe it was late in January, or the early part of February.

Q. Of what year?—A. 1939.

Q. Where were you when he came to see you?—A. In the restaurant in 116th Street, Harlem.

Q. What if anything did he say to you?—A. Well, he says, "Mr. Rossi," he says, "I come out here, I have been sent over here by Mr. Mazzola to investigate you."

So I says, "What's up?"

He says, "Did you work in the Lincoln Tunnel?"

I says, "Yes."

Well, he says, "We got some money for you."

I says, "What money?" I says, "I have been paid every week."

But he says, "No, no; didn't you kick back some money to Frank Laudani?"

And I says, "Never in my life."

He says, "Oh, come on." He says, "We got a private room over here and can we talk better?" because it was a bar, a large place.

So, I says, "No."

"Well," he says, "we will be back in a few days."

"All right," I says, "whenever you are ready I am over here."

So after a few days he came here, and another man. He took me with the man down to Wall Street in New York, and for two or three hour they try to investigate me, but I tell the truth, the truth.

Mr. SIMANDL. You may cross-examine, sir.

226a Cross-examination by Mr. STANZIALE:

Q. Mr. Rossi, do you know Anthony Lasorsa?—A. Yes, sir.

Q. He worked on the job with you, didn't he?—A. Yes, sir.

Q. Do you know Joseph Faillace?—A. I met him after about a month. He was working over there.

Q. He was on the job with you too, wasn't he?—A. Yes, sir.

Q. And do you know Alfio Tomasello?—A. Yes, sir.

Q. He worked on the job too, didn't he?—A. Yes.

Q. Do you know Giuseppe Campo?—A. I met him after two or three months I been working there.

Q. And he was working on the job too?—A. Yes, sir.

Q. You never had any trouble with Lasorsa, Faillace, Tomasello, or Campo, while you were on the job?—A. I had trouble with nobody.

Q. Let me ask you this: Will you deny that you received money during the time that Anthony Lasorsa was working on the job, as part of a kick-back; you deny that?—A. Certainly; they never give me no money.

Q. Did you ever get any money from Joseph Faillace?—A. No, sir.

Q. Did you ever cross the ferry with them together?—A. Who? Faillace?

Q. Any one of those four persons, Campo, Lasorsa, Faillace or Tomasello.—A. Some mornings with the seven or eight of them.

Q. How about going home?—A. The same thing.

Q. How about these particular four persons, Lasorsa, Faillace, Tomasello or Campo? Did you ever cross with them?—A. No; because I had to go home that night in Trenton, New Jersey, at that time.

227a Q. Now, let me ask you this: Do you deny receiving any money, whether kick-back or otherwise, from Joseph Faillace?—A. No, sir.

The COURT. The answer was "No, sir"?

Mr. STANZIALE. It is all right; it is understood.

The COURT. He means that he did not receive any money.

The WITNESS. That's it.

Q. Did you ever receive any money, kick-back or otherwise, from Alfio Tomasello?—A. Never.

Q. Did your ever receive any money from Giuseppe Campo as part of a kick-back or otherwise?—A. No, sir.

Q. Did Anthony Lasorsa, or Faillace, or Tomasello or Campo or any one of those men on this job ever ask you for a loan of any money?—A. No, sir.

Q. How long do you know DeCesare?—A. About six or seven years.

Q. You knew DeCesare before this job, didn't you?—A. Yes, sir.

Q. You only knew Lasorsa, Faillace, Tomasello, and Campo from the time that they started to work on this job?—A. Yes.

Q. You didn't know them before?—A. No, sir.

Q. But you knew DeCesare from other work?—A. Yes, sir.

Q. Did you work with him before?—A. Yes, sir.

Q. And he was a member of your union, the union you belonged to?—A. Yes, sir.

Q. 47?—A. Yes, sir.

Q. How many other jobs would you say that you and DeCesare worked together on?—A. Well, I believe it was in two jobs.

Q. Can you tell us where these jobs were?—A. One wa——

228a Mr. SIMANDL. I object to that, if the Court please.

The WITNESS. One was in Rosedale, in Long Island.

Mr. SIMANDL. Go ahead and ask the questions.

Q. What jobs were these two jobs that you were working on with Gaetano DeCesare?—A. One was in Rosedale, Long Island.

Q. What kind of a job was that?—A. Bridge.

Q. How long did that job take?—A. I was stayed there until about two months.

Q. So you worked two months with DeCesare?—A. Yes, sir.

Q. When was the next job?—A. In Babylon, Long Island.

Q. What kind of a job was that?—A. Bridges.

Q. Now, how long were you and Gaetano DeCesare members together, as far as you know, in Local 47?—A. I don't know. When I went in 47, DeCesare was already a member. I don't know when he joined in.

Q. Can you tell us when you joined 47?—A. In 1937, I believe; In 1937.

Q. And you knew DeCesare for six or seven years, you say?—A. Yes, sir.

Q. Was that six or seven years before you started to work on the Lincoln Tunnel job, or from now?—A. Well, some—about that.

Mr. SIMANDL. He wants to know, Mr. Rossi, whether you compute the acquaintance from now or the time of the job.

The WITNESS. From the time of the job.

Q. In other words, your acquaintance with DeCesare was from these two other jobs that you had with him?—A. Yes, sir.

229a Q. Now, I believe you said that in January of 1939 Mr. Sarrapede came to see you where?—A. 116th Street, Harlem, New York.

Q. Who was with you?—A. A lot of people was in there, in that restaurant.

Q. Well, tell us who was there?—A. Well, he called me separate.

Q. Can you tell us who was in this restaurant? Can you remember?—A. I can't recall the man Mr. Sarrapede bring with him.

Q. Whom did he bring with him?—A. The name is Joe. He ought to know.

Q. Well, you tell me; if you remember.—A. I can't remember the second name.

Q. Was he a Government agent?—A. No, he was a stone mason.

Q. Oh, he was a stone mason?—A. Yes.

Q. And you say that Mr. Sarrapede came with this man Joe in the restaurant?—A. Yes, sir.

Q. Did he show you a credential showing that he was a Government agent?—A. He didn't show me nothing.

Q. He didn't show you any credential, something like this, certifying that he was a Government agent, plus the picture on it, and the department with which he was connected?—A. No, sir.

By the COURT:

Q. Did he tell you who he was?—A. Yes, sir.

Q. What did he tell you he was?—A. He says, "I am a Government man."

Q. A Government man?—A. Sure.

By Mr. STANZIALE:

Q. Did he tell you at that time that Mazzola had sent him?—A. Yes, sir.

230a Q. Did you ask him why Mazzola had sent him if he was a Government man?—A. Well, I didn't inquire that question, because I don't know what it was all about.

Q. Was Mr. Mazzola with Mr. Sarrapede?—A. No, sir.

The COURT. Will you ask Mr. Rossi if he ever talked to Mr. Mazzola about this phase of it, not to tell what it was, but if he had a conversation with him.

Mr. STANZIALE. Yes.

Q. Now, did you go in the side room with Mr. Sarrapede?—A. We don't have any side room over there.

Q. Were you sitting down or standing up?—A. Standing near the door.

Q. What is this, a restaurant or a bar?—A. A restaurant and bar.

Q. And he spoke to you at the door?—A. Yes; near the door.

Q. Was anybody with you?—A. No.

Q. And did you talk to him?—A. Yes, sir.

Q. How long did you talk with him?—A. About five minutes.

Q. And he told you why he came to see you?—A. Yes, sir.

Q. As to whether you accepted any kick-back money from the job?—A. That is what he ask me.

Q. Or whether you paid any money to Frank Laudani?—A. Yes, sir.

Q. And you denied that?—A. Certainly.

Q. Did you see him again?—A. Yes.

Q. How long after that first visit?—A. I do not catch that.

Q. How long after the first visit that you saw him in January?—

A. I think it was about three weeks, I don't know.

231a The COURT. There was one at Wall Street.

The WITNESS. Yes, sir.

Q. And he came where?—A. At the same place.

Q. You were in this place again?—A. Well, I was there—I was, after work, I was there all the time.

Q. Who was with you at that time?—A. Nobody.

Q. Now, when he came to see you the first time and asked you whether you took any kick-back money while you were working on this job, what did you do after he left you?—A. Nothing.

Q. Did you see Mr. Frank Laudani?—A. No, sir.

Q. Did you go up to Mr. Laudani and say to him there had been a Government agent around and asked you whether you kicked back any money to him?—A. No, sir.

Q. And you saw him two weeks after that——A. Yes, sir.

Q. Two or three weeks?—A. Yes, sir.

Q. And you say that after these two weeks, you saw Mr. Sarrapede again, is that right?—A. Yes, sir.

Q. Who was with him the second time?—A. I don't know who it was.

Q. Mr. Fitzgerald, the Government agent?—A. Yes, sir.

Q. And they spoke to you in this restaurant?—A. Yes, sir.

Q. What did they ask you the second time?—A. To get in the machine and go down to Wall Street.

Q. And they questioned you, didn't they?—A. Yes, sir.

Q. And then you denied what is contained in that statement, is that right?—A. Yes, sir.

Q. And you signed this [handing]?—A. Yes, sir.

Q. After you signed this statement, did you see Frank Laudani?—A. Yes, sir.

Q. How long after?—A. I think about two or three weeks after. I went to ask him about job in Shore Road, in Brooklyn.

232a Q. You went to see Laudani two or three weeks after, asking him for a job, is that correct?—A. Yes, sir.

Q. But you did not go to see him personally to tell him that there was an investigation going on?—A. No, sir.

Q. At the time you signed this statement you were asked in this statement whether you had kicked back any money, is that right, to Laudani?—A. I don't know.

Q. In the statement you were asked, and which you signed, whether you had ever kicked back money to Frank Laudani, weren't you?—A. I never kicked back.

Q. Yes. But you were asked that in the statement?—A. Well, Mr. Sarrapede asked me that; yes, sir.

Q. You denied that?—A. Certainly.

Q. Mr. Laudani was the president of Local 47 while you were working on this job, in the months of February and January 1939?—A. Well, I can't recall that; because I never go to the meetings. I don't know who is officer in there, or not.

Q. You don't know what office he held?—A. I go there just to pay my dues and go home.

Q. Let me ask you this: Do you know what position, in Local 47, Mr. Laudani held while you were working on this job?—A. Sometime business agent, sometimes was president; but I can't recall, because I am not much interested to go to the meeting.

Q. Over how long a period of time did you know Mr. Laudani?—A. 1936.

Q. Have you worked on any other jobs with him other than this job?—A. Yes, sir.

Q. Where were those jobs at?—A. All the way up in the Bronx, in 254th Street, I think.

Q. What kind of a job was that?—A. Bridges.

Q. And did you work on any other job with Mr. Frank Laudani?—A. Yes, sir.

Q. Where?—A. Long Island.

Q. Where?—A. Babylon, Long Island.

233a Q. What kind of a job was that?—A. Bridges.

Q. Was Mr. Laudani foreman on those jobs, too?—A. Yes, sir.

Q. You got the jobs through Mr. Laudani in Babylon and Long Island?—A. Yes, sir.

Q. In other words, he put you to work every time he was a foreman of a job?—A. Yes, sir.

Q. And then, when this agent came over to see you, concerning Laudani, the foreman who put you to work, you never told him that Mr. Sarrapede came to see you or discussed the case with you at all?—A. No.

Q. How long were you foreman on this Lincoln Tunnel job?—A. Only a few days, because it was the last month, and we have seven or eight in gang over there. Too much one mason, so Frank tell me, "You take care of this section."

Q. I see. Frank made you a foreman?—A. No. He said, "Take care of this section."

Redirect examination by Mr. SIMANDL:

Q. As I understood you, Mr. Rossi, you first saw Mr. Sarrapede early in January, and then you saw Mr. Sarrapede and Mr. Fitzgerald some three weeks later on which occasion they asked you to get into an automobile and took you to Wall Street?—A. Yes, sir.

Q. Is that right?—A. Yes, sir.

Q. During those two occasions, are you sure you did not talk to Mr. Laudani?—A. No, sir.

Q. During that time, you did not?—A. I never went to see him.

Q. You did not go to see him. Did you speak to him during that time?—A. No, sir.

Mr. SIMANDL. All right, that is all.

The COURT. Members of the jury, will you be back at quarter after one, please.

(Noon recess.)

234a AFTERNOON SESSION

FRANK LAUDANI, one of the defendants, called and sworn in his own behalf, testified as follows:

Direct examination by Mr. SIMANDL:

Q. Where do you live, Mr. Laudani?—A. 893 Willoughby Avenue, Brooklyn.

Q. How long have you lived there?—A. About four years.

Q. Prior to that where did you live?—A. Park Avenue, Brooklyn.

Q. Now, what kind of a place is it you live in?—A. Two-family frame.

Q. And you occupy one of the floors?—A. I do.

Q. How old are you?—A. 44.

Q. Are you married?—A. I am.

Q. Have you any children?—A. Two.

Q. What is your trade?—A. Stone mason.

Q. Tracing back to 1936 or 1937, by whom were you employed?—A. Cape Ann Granite Company.

Q. Who were the officers of the Cape Ann Granite Company?—A. William F.—Louis F. Hewett and Arthur J. White.

Q. Were you an officer, director, or stockholder of that company?—A. I was not.

Q. Now, during the year 1937, part of the year, until, I think, May 1938, were you employed on the Weehawken approach to the Lincoln Tunnel?—A. I was, as foreman.

Q. By whom?—A. By the Cape Ann Granite Company.

Q. Now, were there any other companies, contractors, who were also engaged in the same type of work as was the Cape Ann Granite Company——A. Yes.

Q. On that project?—A. Yes.

Q. What other companies?—A. Arizonica and Breed.

235a Q. That was in no wise associated with the Cape Ann Granite Company?—A. No.

Q. They were doing the same type of work?—A. They were.

Q. At the same time?—A. Yes.

Q. Now, during this period commencing 1937 and ending in May 1938 was there a considerable quantity of that type of work to be performed by stone masons?—A. Yes.

Q. What was the condition of labor at that time?—A. Well, there were a lot of projects in operation at the time. They were building the West Side Highway and the Henry Hudson Parkway, and we had all grade-crossing eliminations made of stone which we call highway bridges. On the West Side Highway there were big walls, retaining walls.

Q. Was there an ample supply of labor or a shortage of labor at this time?—A. The stone masons were in demand at the time, for the reason that there are only a certain number of them in the city, or rather, in the Metropolitan area, and they were pretty well occupied.

Q. From what particular Local was the Cape Ann Granite Company obligated to obtain its laborers so far as the Weehawken project was concerned?—A. From the Local that is situated in that locality. In that case it was Local 29 from Union City.

Q. Were they able to supply the demands of that project?—A. Before starting operations on that job, I visited the job a few times in preparation, and I made an appointment with the business agent, one Charles Schuttig, from Local 29; and I asked him to meet him on the job, and we discussed that very thing.

I said, "How are you fixed over here for stone masons?"

He said, "The few that I have are all engaged. They are working for Arizonica and Breed. There is some more work
236a under the approaches to the bridge, and I can't let you have any too many men."

I said, "Well, I expect to use quite a few. Is it all right if I bring them in from New York?"

And he said, "That is perfectly all right; and if I have any to spare I will send them over, and you can put them to work."

Q. How much was your wage?—A. I believe I started with $60 until the increase came.

Q. And then how much were you paid?—A. $70 per week.

Q. During the time that you were employed on that project, were you a member of any union?—A. Yes; Local 47.

Q. Up until July of 1937, did you hold any position in the union?—A. I did not.

Q. In July 1937 were you elected an officer?—A. I was. I was elected president.

Q. At that time who was the business agent of that particular local?—A. Do you mean when I was elected president?

Q. Yes.—A. Louis Mazzola had been elected president—while I was elected president, he had been elected business agent at the same election.

Q. You are now a business agent?—A. I am now.

Q. And you are familiar with the duties of a business agent——A. I am.

Q. Under the union regulations?—A. I am.

Q. What are the duties of a business agent?—A. Well, the business agent visits the jobs that are about to begin, or the jobs that have been started and sees that all the union regulations are lived up to.

Q. Now, throughout the time, from July 1937, until the completion of the project at Weehawken, who was the business agent for 47?—A. Louis Mazzola.

237a Q. Who was the business agent for 29?—A. Charles Schuttig.

Q. Who was business agent for Local 78?—A. Tony Colasanti.

Q. Now, Local 78 is the union that Mazzola belonged to formerly prior to his transfer in July, isn't it?—A. Yes.

Q. Now, what men were employed there, from what unions?—A. Well, I had men there from Local 78, 47, and 29.

Q. Now, do you know Mr. Spatola?—A. I do.

Q. Was he member of Local 78?—A. He was.

Q. Was he a member of Local 47?—A. No, he never became a member. He transferred, but they did not accept his membership.

Q. At what time did he do that?—A. At the same time that Mazzola transferred from Local 78.

Q. Were there any from Local 78 who transferred, who succeeded in transferring into 47?—A. Yes.

Q. Who testified here?—A. Yes.

Q. Who were they?—A. Vincenzo Liotta, Antonio Siggia, Mauro Leone, there might be some more; I can't think of them off-hand.

Q. Had you any occasion to discuss Mr. Mazzola with any of the men that you have mentioned?—A. Many times.

Q. While you were on the job?—A. Yes.

Q. Did they have any great friendship for him?—A. They certainly did.

Q. How many stone masons and stone cutters were employed on the job, that is, the Weehawken project?—A. About, I would say, the highest amount that I had on the job at any one time: may have been close to sixty stone masons alone, and stone cutters.

238a Q. Now, were there any others who worked on the job aside from that particular type of mechanics?—A. Yes; we

had stone mason's helpers, and we had common laborers; we had carpenters to build the scaffolds. We had crane operators, oilers, and truck drivers.

Q. How many were there in all?—A. Over a hundred at one time.

Q. How many members are there in Local 47, or were there at that time?—A. About 125—in the Local, you mean?

Q. Yes; in that particular Local, I am talking about.—A. That is right.

Q. Was there any other person representing the Cape Ann Granite Company on the job other than yourself?—A. Yes, sir.

Q. Who?—A. Mr. Arthur White, Mr. Hewett, but mostly Mr. Carney used to visit the job.

Q. And what was he?—A. He was the estimator of the Cape Ann Granite Company, and he knew all the details of the job more than anyone else.

Q. Now, what was the union scale during that period?—A. When the job started, until June 1st, 1937, the union scale was eight hours for $12; $1.50 per hour.

Q. Yes, and then?—A. Subsequent to June 1st, it became $13.20 for seven hours, which made the rate $1.88½ per hour.

Q. Now, are you familiar with the regulations of the trade, the by laws and other regulations of the union, that a union man is sworn to uphold?—A. I am.

Q. Is there anything in that regulation that makes it an offense for a union man to work under the union scale?—A. Yes.

Q. Now, from your knowledge of union procedure, if a man does work under the union scale, in violation of these bylaws or regulations, to whom is the complaint made?

Mr. STANZIALE. Objected to, your Honor.

The COURT. Objection overruled.

239a A. Working under the scale is considered scabbing in the union rules; and there is $100 fine attached to that penalty; and the man that is compelled to work under the scale, rather than take that risk, he complains to his business agent immediately. In turn, the business agent goes through the regular procedure of seeing that everything is justified.

Q. And in this instance, the business agents that I have enumerated were the business agents that were on this job?—A. They visited the job.

Q. One of which was Louis Mazzola?—A. That is right.

Q. Now, during any of the time from July 1937 up until February 1939 when you had your conversation with Mr. Sarrapede, did anyone in the union, Mazzola or otherwise, in Local 47, make any

complaint or bring to your attention any alleged violations of the union regulations——A. No.

Q. With respect to the job at Weehawken?—A. No.

Q. Now, did you know all of these men whom you employed on the job?—A. No.

Q. I mean prior to the time that you hired them?—A. No; not all. I knew some from previous occasions; but some I had never seen before.

Q. What was your procedure in hiring men whom you didn't know and who presented themselves to become members of your organization?—A. You see, in this particular work that we were doing in the Lincoln Tunnel, it is called elevation work in the trade. It is work where stone is cut to a certain dimension and must fit into a certain pattern. The stone mason trade is divided into many branches. We have the stone cutter who knows how to cut a stone and bring it out to any size; and then the mason knows how to lay out the pattern on the wall according to the specifications and what the inspectors desire. Then we *do* have a stone mason. He only knows how to do rubble work. That 2402 would be work that is done in the foundation. That is rough work. You only throw one stone on top of another and mortar it in. That is the wall; and it is good and strong. But that is a different kind of work. You know, many of these stone masons, they are not very good at cutting the stone; so on this instance, on a job of this size, if we didn't get the right men, the union rule is that we have to pay them two hours' time whether they worked five minutes or ten minutes, we have to pay them two hours, and that was quite an expensive experiment to find out whether he was qualified. If I knew the men from previous experience, in that event I ask whether they knew any of the men, and many times a man on the job would recommend somebody they knew was qualified to do that particular kind of work.

Q. Do you know any of the men who were actually employed for the other contractor on the job, that is, for Arizonica and Breed, who actually applied for this work in your organization and left that Arizonica and Breed?—A. Well, I recall two of them; because one testified. I heard another name mentioned here. One was Tomasello. He worked for Arizonica and Breed. One day he asked me for a job, and I knew he had worked on the other job, so I gave him a job. Verzi, he worked for Arizonica and Breed and got a job with me; and another was Sam Peters. He worked for Arizonica and Breed, and he came to work for the Cape Ann Granite Company.

Q. Now, Mr. Laudani, do you recall whether DeCesare recommended any of these men to you?—A. Yes.

Q. Will you give us your best recollection of the men that he recommended to you?—A. Yes; I remember him recommending Trolicchio, Lamastra Lasorsa, Sciancalepore, and Leone. There might have been some others that I don't recall. I remember that clearly because they came from the same town as Mazzola did. They were all townsmen and they were all proud of the fact.

241a Q. Did those men tell you that they were friendly with Mazzola?—A. Well, I knew that from their talk that we had during the happy days when Mazzola was the business agent of the Local and until the trouble started, they always voiced their opinion; and then later in the meetings they voiced their opinions openly that they were Mazzola's friends more than mine.

Q. Now, did you loan any money to these men?—A. Not all of them. Yes, occasionally.

Q. How did those loans come about?—A. Well, they would come and say, "Would you advance me five dollars until pay day," or "Would you let me have two dollars until tomorrow"; and I always gave it to them.

Q. Did you keep any record of what you disbursed or how much you disbursed, or anything of that sort?—A. No, I did not keep any record, because it never amounted to any great number. If today one man would ask me, maybe I would not be asked by anyone for another two or three days. And another day, maybe two or three men would ask me, and that would be all for that week.

Q. Did they always repay you?—A. Always.

Q. Now, where did you personally have your particular office on the job?—A. I had it at the extreme end, the southern end of the job, across the roadway from the job itself, on Hudson Boulevard, I think they call that.

Q. Now, what did you keep in that place there?—A. Well, there we had a field office, a tool shed with a partition in between. The place was 20 feet long and 10 feet wide with two entrances and four or five windows. Then we had a partition on the inside. That made the field office something like 6 by 10; and 14 by 10 was the size of the tool shed where the men would hang their clothes and in the night take in the small tools that we worked with.

Q Now, what did you have in there to help you in connection with your task?—A. I had a drawing table with a

242a board; and on the table there was plans and specifications and lists of men that I used to make up for the division of the men in the various gangs every morning. I would always have that list so that I could check up—the bookkeeper, he would check up, rather, in a certain gang to find certain men.

Q. Now, during the time that you were on the job that I have

previously referred to, did you ever induce anyone of those working on that job for the Cape Ann Granite Company, by force, intimidation, threats of dismissal from employment or in any other manner to give up or give back any moneys which they earned on that job?—A. I did not.

Q. Did you ever authorize Mr. Rossi to induce any one of those working on that Cape Ann Granite Company job, by force, intimidation, threats of dismissal from employment, or in any manner, to give back or pay any of their moneys that they earned on that job?—A. I did not.

Q. Did the Cape Ann Granite Company ever authorize you, or authorize any one for you, to induce any one of those working for them, by force, intimidation, threats of dismissal from employment, or by any other manner to give back or give up any part of their moneys which they earned on that job?—A. They did not.

Q. Did you authorize DeCesare, the gentleman who testified here, to induce any one of those working on the Cape Ann job; by force, intimidation, threats of dismissal from employment, or by any other manner, to give back, or kick back, any of their moneys which they received on this job?—A. I did not.

Q. Did you authorize Spatola to do anything of that kind?—A. No.

Q. Did you authorize Pedevillano to do anything of that kind?—A. No.

243a Q. Did you authorize any man on that job to induce anyone to do these things which I have described in the previous questions?—A. I did not.

Q. Now, did you authorize Rossi to procure anyone to do such acts?—A. I did not.

Q. Had you, or did you have any knowledge of any act by Rossi, DeCesare, Pedevillano, or Viaggio, of the nature of which I have just described with respect to the men working on that job?—A. No.

Q. Do you know this man Spatola?—A. I do.

Q. He has testified that he met you in the office, I presume the office that is your shanty, shortly after the strike or raise in pay, whichever it was, and that he spoke to you about moneys which he said he was paying to Rossi, and that you said it was the order of the office. Did you ever have any such conversation with him?—A. No, I did not.

Q. Did you ever receive any moneys on account of any alleged kick-back from Spatola?—A. No.

Q. Did you ever give Mr. Spatola money, or receive money from him?—A. Yes, I did.

Q. Under what circumstances, please?—A. Spatola lived out in the Bronx, and there was a hardware store in his vicinity; they sold certain tools that we used on the job known as a bull set. That is what I would say is an overgrown and oversized chisel, what we used for breaking off large pieces of stone with a sledge hammer and that chisel. These bull sets are about eight pounds apiece, and their value is about 40 cents a pound at the time. Spatola knew this hardware store, and they carried a very fine line of these tools, and occasionally when we did need them, I gave Spatola money to pick them up for me, and he would bring me two every time I needed them.

244a Q. And would you pay him?—A. Yes, I would pay him.

Q. Did you pay him in advance or would you pay him as he brought the tools back?—A. I paid him in advance; and sometimes I would tell him to bring two of them in, and then I would pay him; and many times he brought me change back.

Q. Now, when was the first time that you learned that you were accused of the matters contained in this indictment?—A. One night I went home and I found a slip that someone had called me and they left a telephone number and the name Sarrapede. The next day, I believe I called up and I spoke to someone in the Sub-Treasury Building, in the P. W. A. office; and I was asked to come down there.

Before I went down there, I think I heard of this case from Viaggio. That was just a day or so, or maybe a day before.

Q. And you went down to see Mr. Sarrapede voluntarily?—A. I did.

Q. And you signed the paper that is contained there?—A. I did.

Q. How long were you there, Mr. Laudani?—A. I was there a few hours; but I waited quite a while until they typed my statement.

Q. Now, did you ever hear about this matter prior to your election as business agent in November or December 1938?—A. No, the first time I heard of it was in the very early part of February.

Q. Of 1939?—A. That was 1939, yes.

Q. Now, you were elected business agent in November or December, 1938, were you not?—A. I was.

Q. And whom did you oppose?—A. Louis Mazzola.

Q. When did bad blood start to exist between you and him?—A. Well, at first it was when I defeated him for election to the State Convention. That was held in August at Buffalo,

245a New York. I defeated him in that election. That was over, and then the National Convention came up to be held at Milwaukee, Wisconsin, and we were both delegates, and

I won the election. Well, that did not cause any too good blood, but later; in November——

Mr. STANZIALE. Just a minute, Mr. Laudani.

The COURT. He is all right so far.

Mr. STANZIALE. Yes. I mean, I want to have it brought to the witness' attention that what this fellow Mazzola may have said to him or to any person in connection with this case should not be part of this evidence, because your Honor can very well see the disadvantage I am placed in.

The COURT. Mr. Simandl knows the rules.

Q. Now, during the time that this election took place, can you tell me whether or not any man who testified, participated in that election on the side of Mazzola?—A. Yes.

Q. Who were they?—A. Well, DeCesare and his group. By his group I mean Trolicchio, Sciancalepore—I can't recall the names—Faillace. They were quite grouped together. It was quite a heated election.

Q. And was Lasorsa one?—A. Lasorsa was one.

Q. And did these men openely indicate their friendliness to Mazzola and any antipathy to you?—A. Yes; when the polls opened the morning of the election, on Saturday morning, they were there campaigning for him.

The COURT. What do you mean by "antipathy"? Do you mean that they supported Mr. Mazzola?—

The WITNESS. And they tried to take votes away from me.

The COURT. This was an election contest?

The WITNESS. That is right.

The COURT. You used the word "antipathy."

Mr. SIMANDL. Well, I have been restricted from going into the details.

246a The COURT. All right, go ahead.

Mr. SIMANDL. Some elections are mild, and some are not.

The COURT. All right, go ahead.

Q. Was there any feeling during this election?—A. Any what?

Q. Feeling.—A. Yes.

Q. Tell us what you mean?—A. They almost came to blows right at the polls, two or three times during the day, between my followers and his followers.

Mr. SIMANDL. I don't want you to answer this question until after the District Attorney has made his objection, if he is going to object.

Q. After the election will you tell me what, if anything, Mr. Mazzola said to you with respect to what he intended to do toward you?

Mr. STANZIALE. That is objected to, if your Honor please.

The COURT. Objection sustained. Exception granted the dedendant.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr. SIMANDL. Exception, if the Court please.

The COURT. Yes.

Mr. SIMANDL. I must press one more question.

Q. Will you state whether or not, at any such conversation, any of those who testified were present?—A. Yes.

247a Q. Who were they?—A. Rossi was one of them. DeCesare was another one; and Roberti was another one.

By the COURT:

Q. Was Mr. Rossi there? Did he hear it?—A. Yes.

By Mr. SIMANDL:

Q. Now, did he say anything at the same time to Rossi?

Mr. STANZIALE. Objected to.

The COURT. Objection sustained.

Mr. SIMANDL. Exception, sir.

The COURT. Exception allowed defendants.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. Rossi, at the time, had been one of your adherents in the election?—A. That is right.

Q. Now, after the election what, if anything, did Mr. Mazzola do——

Mr. STANZIALE. Objected to.

Q. —with respect to the union?

Mr. STANZIALE. Objected to. We are not interested in this union squabble.

The COURT. I don't know where that might lead. It may be preliminary to something that is proper that he will testify to. You may answer it.

248a Q. Did you understand the question?—A. Yes. After the election he said the last thing he would do would be to get even with me.

Q. No, no; not what he said.

By the COURT:

Q. With reference to the union. Did he leave the union?—A. He left the union in December 1938.

Q. And he was not pleased, was he? He was disappointed and disgruntled and sore, wasn't he?—A. Well, he had been business agent for 40 years.

Q. That is the gist of it, isn't it?—A. That is true.

By Mr. SIMANDL:

Q. Now, thereafter was there transmitted to you that he and his adherents intended to get even, if I may use that phraseology, or get revenge against you?

Mr. STANZIALE. Objected to.

The COURT. Now, Mr. Simandl, if you will be more specific on that, I can rule properly.

If any of these witnesses who testified for the Government are intended to be covered by that question, I will permit it; but if it does not involve them except by indirection, that they might have been friends of Mr. Mazzola, I will have to exclude it.

Mr. SIMANDL. If your Honor please, these are threats that were submitted to him by others. He obviously was not present at the time they were made, and therefore is unable to state how many of those present were those who testified.

The COURT. I will have to sustain the objection, Mr. Simandl, and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

249a Don't you think that you have the substantial fact, before the jury, that Mr. Mazzola was at least a union enemy of Mr. Laudani, and that Mr. Mazzola was a friend of some of the witnesses who testified here. I think you have got that in very successfully; and haven't you achieved your purpose by getting that in? Now, you have other evidence to clinch this.

Mr. SIMANDL. May I have an exception, if the Court please?

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

The COURT. I don't want to approach this question from so many different angles if we covered the principle, but if you still feel that you haven't got it across to the jury in the full force that you would like it, well, you go ahead and ask the question.

Mr. SIMANDL. Your Honor has overruled the question. May I respectfully ask the question?

The COURT. Which question?

Mr. SIMANDL. The last question.

The COURT. The last question I overruled, and I give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

By Mr. SIMANDL:

Q. Now, as to those who were not members of 47, but were in fact members of 78, the union to which Mr. Mazzola belonged and transferred out of. Do you know any of those
250a who testified who were definitely his friends and members of that local?

Mr. STANZIALE. Objected to, if your Honor please.

The COURT. Who were definitely friends of Mr. Mazzola?

Mr. SIMANDL. Yes, all men who testified.

The COURT. Well, that ties in the witnesses who testified. It might be proper for the jury to know that, because it might be construed as a motive for these persons testifying against the person now on the stand. That is a connection between the witnesses who testified and Mr. Mazzola, and I think that would be proper.

Q. Can you state them?—A. Yes.

Q. Who were they?

The COURT. Have you got the question?

Q. (The pending question was read by the reporter.)—A. The answer is yes.

Q. Who?—A. Felice Giovene, Sante Spatola, and Santo Di-Costa. Those I remember that testified here.

Q. One Tomasello testified, at the time he went to work you made a contract of employment with him whereby he was to be paid $1.50 an hour and was to kick back 25 cents an hour, and that you told him to pay Rossi. Did you ever make any such contract with him?—A. I did not.

Q. He is the man who was working on the Arizonica Breed—A. Yes.

Q. On the same job?—A. That is right. He had been working there for quite a while.

Q. Now, Campo testified that one Spatola spoke to him. Did you ever authorize Spatola to speak to him, or induce,
251a by threats or intimidation, threats of dismissal from employment, or in any other manner, that he should give up or give back any moneys which he earned on that job?—A. I did not.

Q. Did Spatola ever turn over to you any moneys which he allegedly collected from this man Campo?—A. No.

Q. Mazzola, after he got out of your union, went back to 78, didn't he?—A. He did.

By the COURT:

Q. Did you learn your trade in this country or back home?—A. Right here.

Q. You were born here?—A. Yes, sir. My father was in that trade.

By Mr. SIMANDL:

Q. Now, you spoke to Spatola in February of this year, did you not?—A. I did.

Q. At the time that he signed this paper, D-1 for identification?—A. That is right.

Mr. SIMANDL. I offer the paper in evidence, Mr. Stanziale.

The COURT. Can I see that?

Mr. SIMANDL. Yes.

Q. Can you tell us how you came to speak to Mr. Spatola, and where?—A. It was on a Saturday morning previous to Washington's Birthday that Nicholas Cesare, the business agent of Local 78, called me about noon time and said that Sante Spatola wanted to speak with me. And February 23rd, which was the day that we celebrated Washington's Birthday, being that it fell on Sunday. I called Spatola at his home, and he made an
252a appointment to meet me at the union office. We met there about 11:30. When I got in there, I asked him what he wanted to speak to me about.

He said, "Well, I have been ashamed of myself for what I did."

I told him, "This was a fine time to feel ashamed after he put me in so much trouble."

He said, "You know who made the trouble for you, Louis Mazzola."

I said, "But, you know that you gave me no money, and I never told you to pay back any money to me."

He said, "Well, I know."

I said, "Will you sign a statement to that effect?" He said, "I can't sign a statement to that effect, because I signed a statement for the Government, and Mr. Sarrapede told me if I ever change it I will get ten years in jail."

I said, "But still you didn't give me any money."

He said, "I will sign a statement that any money I paid, I paid voluntarily."

I said, "To whom did you pay any money voluntarily?"

He said, "To Giovanni Roberti."

I said, "Would you put that in a statement?"

He said, "I would rather leave that out of the statement, but I will state that any money I paid, I paid voluntarily," and he signed that statement to that effect.

Mr. SIMANDL. You can cross-examine, sir.

(The paper heretofore referred to was received in evidence and marked Exhibit D-1.)

Mr. SIMANDL. I would like to read this to the jury.

(Mr. Simandl read Exhibit D-1 to the jury.)

253a Cross-examination by Mr. STANZIALE:

Q. Mr. Laudani, you testified that you never received any kick-back from any of these people who testified?—A. That is what I testified.

Q. Can you tell us about how much money you loaned out as advances to these people?—A. I never kept record of that money, and I stated that to the investigators at the time when they wanted me to ascertain the certain amount. Mr. Fitzgerald, I remember clearly, he said to me, "Would you say you loaned $5,000?"

I said, "By no means." I had a petty cash fund on the job that consisted of about fifty or sixty dollars. That was for the purpose of buying any small tools that we didn't have time to order, a drill or something; and I always accounted for that money at the end of the week with my office. That was the money that I had on hand, sixty or seventy dollars at the utmost. From these loans I did not keep any record, because I did not apply it at one time. One week would go by an no one would ask; and then three or four would ask; and over a period of three or four months, as to the sum of money that was used, seventeen or twenty times, or thirty times, perhaps; if it were to be computed and added all up. I guess it would not even amount to $500.

Q. In other words, I understand you took money from the petty cash box and advanced it, is that correct?—A. That is right.

Q. You kept no record of what you took out?—A. No.

Q. How would you know at the end of the week?—A. Because I knew the total amount of petty cash, and I had a bill for anything I paid out that that fund should have paid; and anything that was turned in there, I had it.

Q. And the persons you carried in your mind?—A. Well, it might be a person or two, or so. In fact, they would come up and give it to me in a day or two, or on a pay day.

254a Q. You had 200 employees?—A. I don't know what time you are referring to, but we started up with four employes and we wound up——

Q. From the beginning of December to May 1938.—A. I could not remember that offhand. We had daily records for that purpose.

Q. Well, approximately, over an average of a period of a year and a half, I would say.—A. Well, I would say we averaged 40 to 50 men.

Q. Did you know each and every man who worked there by his first and last names?—A. No, I know them by their last name mostly, and not by the first name.

Q. So that when you made these advances, you did not write down how much or whom it was given to?—A. If a man has a

contract with me; if not, they would not ask me at all, they would ask between each other. It was the men who were more friendly and we saw quite often that would come to me for these loans.

Q. Now, did you ever loan any money to Vito Sciancalepore?—A. No.

Q. Did you ever loan any money to Anthony Lasorsa?—A. I don't remember that I did.

Q. Did you ever loan any money to Antonio Siggia?—A. Yes, he was one of our card players. That is the occasion that I recall.

Q. How many times?—A. Oh, I don't remember. It may be twice or three times.

Q. Did you loan any money to Vincenzo Liotta?—A. I did, occasionally.

Q. How many times would you say?—A. Oh, I don't remember.

Q. Did you loan any money to Mauro Leone?—No, I don't think so.

Q. Did you loan any money to Joseph Faillace?—A. I don't think so.

255a Q. Did you loan any money to Alfio Tomasello?—A. Maybe, I am not sure.

Q. Did you loan any money to Giuseppe Campo?—A. I don't think so.

Q. Did you loan any money to Santo DiCosta?—A. No. He was on his job a very short while, and I hardly got acquainted with him.

Q. So that from this list the only person you loaned any money to from what you recollect would be Siggia?—A. Yes, I recall that.

Q. And you recollect Vincenzo Liotta?—A. I do.

Q. Did they pay you back?—A. Yes.

Q. Do you remember when you loaned this money to them?—A. No.

Q. Do you remember what amounts?—A. I don't remember. It was small amounts on ordinary occasions. These fellows enjoyed playing pinochle in the shanty, when we had no work on account of bad weather, and they were pinochle-eers as we called them; and they always ran into a game than ran above the funds that they had; and they always stuck their hand in a little hole that I had in the partition and asked for two dollars or three dollars, or whatever it was.

Q. And that is the occasion?—A. That is the occasion that I remember this particular payment.

Q. Can you tell me with any degree of certainty how many times Siggia gave you any money?—A. I don't remember. It may have been two or three times. I don't recall.

Q. Well, Mr. Laudani, if you loaned two or three dollars at a time to people, over this period of time, how do you figure that it was in the neighborhood of about $500?—A. I figured over a period of 15 months that the job lasted. You see,
256a these particular men that you mentioned were men that did not indulge, they were not big sports, in other words. We had men on that job such as crane operators that used to get $15 a day, and they were broke on Monday; and you can rest assured that they were in on lunch time to get carfare money, and then oilers—not the little masons and the young fellows—they were quite sporty and would spend more than they earned. These are the fellows who usually came to me.

Q. Even if you assume that the amount was small, over this period of time you would have made a hundred loans or more?—A. I don't recall. Perhaps I did.

Q. You made no records of this?—A. No, because they were short loans. They would come in today and give it to me tomorrow, or give it to me as soon as they got paid. I never worried about the honesty of the men on the job.

Q. But this was not your money?—A. That is right, but I always straightened out with the company, and if I was short five or ten dollars, I always made that account good.

Q. Did you make more than one loan a week?—A. Sometimes I did and sometimes I did not.

Q. How many loans would you say, the greatest number?—A. I don't know; maybe four or five.

Q. Now, if you made five loans at five dollars apiece, that would be $25, wouldn't it?—A. That is right.

Q. You would take that from the salary, is that right?—A. No, some of them would pay me—they would open their envelope in the shanty and give me it that day.

Q. And if they didn't pay you——A. I laid it out. Well, I didn't exactly repay it, because the company refunded what I paid out. They always got that amount, sixty or seventy dollars, whatever the amount may have been.

Q. Now, Mr. Laudani, you signed a statement which is dated February 7, 1939. In this statement you said that you found out
257a or the time that you were notified that there was an investigation concerning this alleged kick-back, was when you spoke to Mr. Sarrapede; is that correct?—A. That is right—or perhaps a day before. I am not quite sure if I spoke with Viaggio about the matter.

Q. It was about then?—A. It was in the early part of February at any rate.

Q. And at that time Mr. Sarrapede told you or mentioned the names of the persons who had allegedly told him that they had given you kick-back money.—A. I believe he did.

Q. Did you, when he told you that, go to see any of these people and ask them why they made such a statement?

Mr. SIMANDL. What was that question?

The COURT. Mr. Stanziale is asking during this time if he went and asked the folks why they made that statement about the alleged kick-back.

The WITNESS. Some of the folks I did meet; and I met them at the union meeting. I didn't go to anybody's house particularly, because I knew we always met sometime or other; and I did speak to some of these men at the union, and they told me all kinds of fantastic stories that I could not believe in any way, where the agents made the men confess that they did when they said they did not.

One man in particular, Lamastra, told me a story that I could not believe a thing like that could have been done in this democracy called the United States. He said that the agents, after he told them that he never paid back anything, the agents took him in a car and told him he was under arrest, and from Mt. Vernon they took him down to 225th Street, New York City, and when they got down in that direction, that part of town, one of the agents said to the other, he said, "Well, no use locking this man up. Let's take him back. I think he will sign the statement."

258a Q. Who else told you?—A. I spoke to Mr. Felice Giovene, and he said when the agents went to his home, he was not home; and that the agents had told his missus, who had been here for a very short time, that they wanted to speak to Mr. Giovene because they had some money for him; and did he know the amount that he kicked back on the Lincoln Tunnel job. She said she knew he had kicked back, but she didn't know how much; but she sent the boy out and called the father. When he came back, he denied that he ever paid any kick-back, and upon that denial the agent said, "All right, put on your hat. You are under arrest." And he said, "You should have believed me, Mr. Laudani, when those two children of mine and wife started to cry, I would have confessed to murder."

Q. Who else did you talk to?—A. Those are the two or three stories that stand out in my mind. I heard a story from Faillace to Pedevillano, but I don't think you will want it.

Q. That's all right.—A. It wasn't to me. It might be hearsay.

Q. That's all right.—A. Well, Faillace told Pedevillano that the agents went to his home and he was there at the time, and they both made the statement that they never paid anything back to anyone. Later on the agents went back to Mr. Faillace's house and he signed a statement that he had kicked back to his own brother-in-law.

Q. Now, let me ask you this: You were indicted on January 13, 1940, weren't you?—A. I don't know.

Q. Well, we will assume for the sake of the record that you were indicted in 1940, sometime. Is that right?—A. I don't know. I mean, all I know, I was called in February by Mr. Sarrapede.

Q. That is in 1939?—A. That is right.

259a Q. And you were indicted sometime in 1940?—A. I believe so. That is right.

Q. So that over a year elapsed before you were indicted, or around that period of time, is that right?—A. That is right.

Q. Mr. Laudani, when you heard these stories from these particular persons that you have just mentioned, that these methods had been used by these agents, did you report that to any governmental department, that high pressure methods or anything else were used in having these witnesses compelled to make false statements?—A. No, I did not.

Q. Why didn't you?

Mr. Simandl. Just a moment, please. His motives for not reporting it to the Government are not important in this trial.

The Court. Well, he said he did not.

Mr. Simandl. All right.

Mr. Stanziale. If your Honor please, this is to affect his credibility. I would like to press my question. Can I go further on that?

If your Honor please, here is a man who is being investigated—

Mr. Simandl. If the Court please, I don't think any speech is necessary. He does not have to report it to his Government. He can report it to his attorney; and then his attorney can do something. He was asked whether he reported it to the Government and not whether he reported it to his attorney.

The Court. He has answered it.

Mr. Simandl. All right.

By Mr. Stanziale:

Q. You knew Mr. DeCesare, did you not?—A. I did.

Q. How long did you know him?—A. I knew him from on that job.

26ka Q. Did you know him from before?—A. No, I did not. I believe I saw him at the union one night before he came to work on that job.

Q. You were indicted jointly with Mr. DeCesare?—A. I believe so.

Mr. SIMANDL. I object to that.

The COURT. That is proper. He asked him whether he was indicted jointly.

The WITNESS. Jointly? I don't think I was indicted jointly.

The COURT. He is not on trial here.

Mr. SIMANDL. May I have an exception, if the Court please?

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. Did you at any time, at the time the indictment was returned in this case, talk to Mr. DeCesare about this case?—A. Yes, I did.

Q. Did you ever ask Mr. DeCesare whether he was asked by Rossi to make a collection?—A. I did.

Q. What did DeCesare say?—A. He said "No" to me.

Q. What?—A. He told me that Rossi never spoke to him about anything of that sort.

Q. And this testimony in the court room has been a complete surprise to you?—A. It was.

Mr. SIMANDL. If the Court please, his testimony has not been against Laudani. Mr. DeCesare denied emphatically that he ever gave a dime to Mr. Laudani.

26la Mr. Stanziale. He just testified that he said that Rossi never told DeCesare to collect anything. This is credibility, sir, and I want to ask him, because he admitted that he spoke to him.

The COURT. Objection overruled. Exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. Will you say that on the 23rd day of February 1942 Spatola came to the union headquarters?—A. Yes.

Q. Who is Julian?—What is that name [indicating]?—A. That is the man that was a notary public in the cigar store right on the corner of the building.

Q. Oh, I see. This affidavit was executed where?—A. At 4th Avenue and 13th Street.

Q. At what place?—A. New York.

Q. At whose place?—A. In a cigar store and luncheonette. There is a sign in the window, "Notary Public."

Q. How far is that from the union headquarters?—A. Two stores away. It is on the corner of that block.

Q. And you say some delegate of the union called you up on the Saturday previous to the 23rd of February, that would be the 21st of February, and told you that Spatola wanted to talk to you?—A. That is right.

Q. That was about a week or two before this case started?—A. I believe it was.

Q. Right?—A. Right.

Q. You called Mr. Spatola back?—A. No, I did not call him that day. I called him on the Monday morning.

Q. What time did you say you called him?—A. I called him about nine oclock, or 8:30, something like that.

262a Q. Let's see. The information you got from this delegate was on a Saturday?—A. That's right.

Q. And you did not call him on Saturday?—A. No, I did not call him on Saturday.

Q. And you did not call him on Sunday?—A. No, I did not.

Q. But you waited until Monday. Monday was a holiday. Do you know whether Mr. Spatola had a phone at home?—A. Yes.

Q. You called him?—A. Yes.

Q. And he came right down?—A. Yes.

Q. Was he accompanied by anyone?—A. No, he was alone.

Q. Does Spatola write any English?—A. Not that I know of. I know he is well educated in Italian, though.

Q. Well, he told you this story, is that right?—A. That's right.

Q. But he would not put the story about Mazzola in affidavit form. He would only say that he gave up this money voluntarily? A. That's right.

Q. Was anybody present when he said that, other than yourself?—A. Yes, I believe Viaggio was present. I am not sure whether he was in the room or whether he stepped out of the room when that took place.

The COURT. Ask him what Viaggio that is.

The WITNESS. That is Matteo Viaggio that was indicted here.

Q. Mr. Laudani, why didn't you have Mr. Spatola make out a statement in Italian in his own handwriting?—A. I don't know. Perhaps I thought in English was the proper thing to have.

Q. Well, this man was well educated in Italian; why didn't you have a statement taken from him in Italian?—A. I don't know.

263a Q. Who dictated this?—A. I dictated that; and I wanted to add to that that he had paid money to Roberti, and he said "No, to leave that out," but "I will say that I paid the money voluntarily."

Q. Did the notary public question him at all?—A. No, he said, "Do you understand what is written here? Did you read it?" And he said, "Yes."

By the COURT:

Q. Did you talk to him in Italian?—A. No, in English.

By Mr. STANZIALE:

Q. And he signed this paper?—A. He did.

Mr. STANZIALE. That is all.

Redirect examination by Mr. SIMANDL:

Q. Now, Mr. Laudani, Mr. Stanziale asked you whether you reported these matters that you described in your testimony to any one of the Government men, and you said you did not. Did you report that to Mr. Klein, your lawyer?—A. I did.

Q. And at your request did Mr. Klein write to the District Attorney and ask that you be brought before the Grand Jury, that you would waive immunity and testify?—A. I did.

Q. You made that offer?—A. I did.

Q. And do you know that Mr. Klein wrote that letter to the District Attorney and offered to waive immunity and go before the Grand Jury?—A. Yes.

Q. And were you called before the Grand Jury?—A. I was not called before the Grand Jury.

264a By the COURT:

Q. Was that after you got the affidavit from Mr. Spatola?—A. No, sir. This was at the beginning of the trial.

Mr. SIMANDL. This was long before he was indicted.

By Mr. SIMANDL:

Q. That was in 1939, wasn't it?—A. It was sir.

Q. Now, Mr. Laudani, Mr. Stanziale has asked you with respect to certain men whom you mentioned as having come to you with stories, and you recollected only a few. Can you remember Mr. Roberti telling you a story of how a statement was obtained from him?—A. I can.

Mr. STANZIALE. Mr. Roberti has not been called to the stand.

Mr. SIMANDL. Mr. Roberti was named in this indictment.

Mr. STANZIALE. You objected.

Mr. SIMANDL. I did not object to Mr. Roberti. He is named in one of the indictments being tried.

Mr. STANZIALE. All right.

Q. What did Mr. Roberti tell you happened to him?—A. Mr. Roberti told me that he had been visited by the Government agents at his home.

By the COURT:

Q. Did he give the name?—A. Sarrapede. Well, he gave the description to me that later on I recognized as——

Q. This gentleman here [indicating]. A. Well, I didn't know the names of the agents, but he told me that the Government agents had been at his home and they asked him if he had
265a kicked back any money on this job, and he signed a statement that he had not kicked back any money to anyone.

The next day he told me that Spatola got in touch with him and told him that he better change his mind if he wanted to work in this city. The following day after that, which would be two days after, he signed the original statement. Roberti tells me that the same agents went to his home to put him in the car and take him up to Spatola's home, where Spatola was laying in bed sick, and Spatola told him he better sign the statement the other way around; and Roberti tells me that the agent tore up the statement that he had first signed, and made him sign another statement in the presence of Spatola that he did kick back money.

Mr. SIMANDL. That is all.

Re-cross-examination by Mr. STANZIALE:

Q. So that we have the record clear, Mr. Laudani, Mr. Simandl asked you about your offer to go before the Grand Jury to testify in this matter.—A. I did.

Q. You went to the attorney, but you reported these alleged acts of misconduct of the agents to no one, isn't that a fact?—A. I cannot answer that question. My attorney can.

Q. You did nothing further, as far as you personally are concerned, as to these particular acts of the agent that you are now testifying about.—A. No, I just went to my attorney with my story.

The COURT. Mr. Stanziale, I have missed something, I am afraid. What was the offer to go to the Grand Jury about?

Mr. STANZIALE. I will bring that out.

266a. Q. You wanted to testify to tell the Grand Jury in connection with the kick-back, the accusations or the alleged kick-back, isn't that correct?—A. The accusation, yes. That is what I would be glad to go to the Grand Jury and waive immunity on that subject.

Q. Yes, and not for the purpose of reporting the acts of these agents that you heard from these people.—A. I don't know; maybe my lawyer would advise—I was in my lawyer's hands. I would follow what my lawyer would advise me. I am not of legal mind.

Mr. STANZIALE. That is all.

Mr. SIMANDL. That is all.

Stipulation

If the Court please, there is only one other witness, a man by the name of Puloni, who is an old time friend of Mr. Rossi, and a resident of Trenton. I believe he is one of the officers of the National. We called Trenton a number of times and we understand that he is on his way from Washington where he is attending some business in behalf of the National. He is on his way to this very spot; but he has not arrived yet. With his testimony, complete as to character of Mr. Rossi, we close our case, but I do wish to have some opportunity to put his testimony in the record before I close.

The COURT. Is he a substantive witness as to fact, or a substantive witness as to character?

Mr. SIMANDL. Character.

The COURT. Both are substantive, as you know. Suppose we take a recess for a few minutes, and you and Mr. Stanziale get together. Tell Mr. Stanziale who this man is and maybe you will agree to stipulate.

(Following a short recess at this point the trial was resumed as follows:)

267a The COURT. Members of the jury, will you listen to this, please:

Mr. SIMANDL. If your Honor please, it is stipulated between Mr. Stanziale and myself that one Peter Puloni, of 228 Tyler Street, Trenton, New Jersey, a witness called on behalf of the defendant Rossi, would testify as follows:

That he is a resident of Trenton and the first vice-president of the New Jersey State Labor Conference; that he is a representative of the Local No. 9 of New Jersey, and is a member of the Local Draft Board of Trenton; that he knows the defendant Rossi for a period of some sixteen or seventeen years intimately; that Rossi's reputation for being a good, peaceful, law abiding citizen is good; and the jury are requested to regard the testimony in the same manner, and to the same extent as if Mr. Puloni had testified under oath in the presence of the jury to those facts.

The COURT. We will state for the record that Mr. Puloni was to have been here, and your information is that he is on his way from Washington, and we can't wait any longer, because the case is about to close.

Mr. SIMANDL. That is right.

The COURT. Members of the jury, you will consider that Mr. Puloni had appeared and had been sworn and had testified as has been stipulated by Mr. Simandl.

Mr. SIMANDL. With that we rest, if the Court please.

(The defendants rested.)

268a ANTONIO SIGGIA, recalled in rebuttal, testified further as follows:

Direct examination by Mr. STANZIALE:

Q. Mr. Siggia, the time that you were working on this project, the Lincoln Tunnel project, did you borrow any money from Frank Laudani?—A. No, sir.

Mr. STANZIALE. That is all.

Cross-examination by Mr. SIMANDL:

Q. Did you play pinochle in that place, in the shanty?—A. Yes, sir.

Mr. SIMANDL. That is all.

By the COURT:

Q. Did you lose any money in pinochle that you had to repay to Mr. Rossi or to Mr. Laudani?—A. No, sir.

JOSEPH FAILLACE, recalled in rebuttal, testified further as follows:

Direct examination by Mr. STANZIALE:

Q. There is testimony to the effect that you told or had a conversation with Mr. Laudani wherein you told Mr. Laudani that you were forced to sign a statement by the Government agents, Mr. Sarrapede——

Mr. SIMANDL. I object. I am afraid that the District
269a Attorney's premise is wrong. He said he had no conversation with Faillace. He said he had a conversation with Pedevillano with respect to this man. Mr. Laudani said he had no conversation with Mr. Faillace. My client testified that he spoke to a brother-in-law of Mr. Faillace by the name of Pedevillano; and he even qualified it by saying that he got this from Pedevillano and he was telling the conversation had with Pedevillano.

Mr. STANZIALE. The way I understood it was that Laudani said he spoke to Mr. Faillace; and Mr. Faillace said to him——

The COURT. Are you sure we have that right?

Mr. SIMANDL. I am positive.

By Mr. STANZIALE:

Q. Were you forced to make a statement to Mr. Sarrapede?—A. No, sir.

Mr. SIMANDL. I object.

The COURT. Do you mind indicating why you object just briefly?

Mr. SIMANDL. Well, if the Court please, it is my understanding of the law, I may be in error, but I have always felt that this was the law; that if the Government introduces for the first time——

The COURT. You mean it is not rebuttal, is that it?

Mr. SIMANDL. Yes.

The COURT. Oh, I see; on the ground that it is not rebuttal.

Mr. STANZIALE. I just want to clarify any doubt that might be left; but if he objects, all right.

The COURT. Did you bring out the circumstances of that statement?

270a Mr. STANZIALE. Well, I can't; because it allegedly was made to Pedevillano.

This is due to my misunderstanding. Mr. Laudani was supposed to have spoken to Pedevillano, and Pedevillano spoke to him, which would make it hearsay. So that only to clarify any doubt, I asked him whether he was forced to sign any statement.

The COURT. That might make it revelant.

Mr. SIMANDL. If the Court please, Mr. Laudani, while he was on the stand, was asked a question.

The COURT. Suppose we permit the witness to answer that. I will give you an exception if you really press your objection. It may clarify the situation somewhat.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Q. Were you forced to make any statement to Mr. Sarrapede?—A. No, sir.

Mr. SIMANDL. I object.

Q. Or anybody else?—A. No, sir.

The COURT. Objection overruled; exception granted.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Q. Your statements in this case were voluntarily given.

Mr. STANZIALE. That is all.

Mr. SIMANDL. That is all.

271a STEVEN S. SARRAPEDE, recalled in rebuttal, testified further as follows:

Direct examination by Mr. STANZIALE:

Q. Mr. Sarrapede, there has been some testimony to the effect that you, in the conduct of your investigation, have taken a witness from Westchester County, or on the way to New York City, that you forced him into an automobile which you were operating, and then you had that person sign a statement, is that correct?—A. No, sir.

Mr. SIMANDL. Just a minute.

The WITNESS. I am sorry, Mr. Simandl.

Mr. SIMANDL. I don't think you saw me.

I object, if the Court please. The Government has introduced this proposition for the first time on cross-examination, and they are bound by it. Nothing in my direct examination touched upon the proposition. It was introduced by Mr. Stanziale voluntarily.

Mr. STANZIALE. What do you mean "voluntarily"? It was in response to my question.

Why do you make those statements? You know better as an experienced trial lawyer.

Mr. SIMANDL. I am merely making a legal objection to the Court. I submit that the Government is bound by the testimony of Mr. Laudani, and that it cannot offer this witness to rebut that testimony. I submit that it is highly improper to do so, and I merely ask for a ruling from the Court.

Mr. STANZIALE. May I answer that, so that the record may be clear?

The COURT. Now, gentlemen, I feel that in view of the
272a testimony that was given, whether on cross-examination or by direct examination by Mr. Laudani, this young man on the stand ought to be permitted to answer that question. I feel that he ought to be permitted to give his version of that. I will overrule the objection and give you an exception.

Keep to that point and don't go into anything new.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Q. (The pending question was read by the reporter.)—A. No, sir.

Q. Now, Mr. Sarrapede, there is testimony to the effect that in connection with the statement obtained from one Felice Giovene, that Mr. Giovene was forced to sign a statement in connection with this particular case.

Mr. SIMANDL. I make the same objection, if the Court please.

Mr. STANZIALE. Let me finish the question.

Q. Do you remember in connection with your investigation, as far as Mr. Giovene is concerned, where the statement was signed? Was it signed at his house?—A. No: it was not signed at his house.

Mr. SIMANDL. I object to all those questions.

The COURT. The objection is of similar nature, and I overrule that objection.

By Mr. STANZIALE:

Q. Was his wife present when it was signed?—A. I never met his wife. Never saw his wife, and she was not present.

273a Q. Were any of his children present?—A. I didn't know he had any.

Q. And was the statement made in the presence of Mr. Fitzgerald?—A. Yes.

Mr. SIMANDL. I object to all those question, and ask for an exception to all those questions.

The COURT. The objection is of a similar nature, and the exception goes all the way through.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Mr. STANZIALE. We rest.

The Government rested in rebuttal.

The COURT. You both rested. I think you both deserve to rest. Members of the jury, you are all excused until Monday morning.

Motion for Directed Verdict

Mr. SIMANDL. In behalf of the defendants Rossi and Laudani I renew the same motions which I made at the close of the Government's case for directed verdicts upon the several counts of the indictment, and ask your Honor to reconsider them to the same effect as if I, at this time, spread them at length on the record.

The COURT. I have your brief.

Mr. SIMANDL. Yes; I submitted a brief to your Honor.

Motions to Strike Testimony

Now, I also ask your Honor to consider in connection with the motions which I have already made, and those which I have
274a reiterated: At this time, in behalf of Laudani, I move to strike out of the record all testimony of conversations between persons who have testified and others, out of the presence of the defendant Laudani. In order to particularize those who might come to my mind at this time, I call your Honor's attention to the conversation between Spatola and the defendant Rossi out of the defendant Laudani's presence; conversations between the witness Campo and one Spatola out of his presence; the conversation between the witnesses DeCesare and Rossi out of the defendant Laudani's presence; conversations between the witnesses DeCesare and Lamastra; and the witness DeCesare and one Lasorsa; and the witness Faillace with one Pedevillano.

The COURT. So far as Laudani is concerned?

Mr. SIMANDL. Yes; any and all acts of conduct committed out of the presence of Laudani and without his knowledge, by Rossi, Spatola, DeCesare, and Pedevillano. Those acts, which I refer to, were not shown to have been committed with his knowledge or by his authority.

In connection with that motion, may I make a similar motion in behalf of the defendant Rossi with respect to any and all conversations had between Laudani and Spatola, Spatola and Campo, Tomasello and Laudani, and Pedevillano and Faillace, all out of the presence of the defendant Rossi. I also move to strike out any and all acts allegedly committed by Laudani which were not shown to have been authorized, or consented to, or committed with the knowledge of Rossi.

The COURT. Is it your thought that you have not covered that ground sufficiently?

275a Mr. SIMANDL. Well, I don't know just what the law is with respect to that. I have read a number of cases and truthfully, some of the courts say that it is the duty of counsel at the close of the case to call those matters to the particular attention of the Court, and I sometimes think that if is being a little bit what I would call microscopic, but nevertheless I feel it is my duty.

The COURT. I overrule your motions and I give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

Mr. SIMANDL. Now, if your Honor please, I desire to turn to each of the indictments commencing with 7-C and briefly review the evidence, in order to present it to your Honor's mind, so that your Honor can rule as to whether or not any of the counts, assuming your Honor denies my motions, are to be submitted to the jury, and what counts they are.

The COURT. Well, don't you think we covered that?

Mr. SIMANDL. We never did this, Judge. I reserved this to the close of the case. I have been very careful to take each indictment and merely take a little excerpt from the testimony, and maybe after stating the testimony your Honor——

The COURT. I thought you and Mr. Stanziale were going to try and eliminate certain counts of the bills of indictment, where it was considered by you both that they had not been covered or tied in by proper testimony. Those questions where there is a

276a fact situation presented as to the guilt or innocence from the stand, I, of course, want them to go to the jury. Mr. Roberti has not been mentioned at all.

Mr. SIMANDL. Well, they have been dismissed by consent of Mr. Stanziale.

The COURT. Or they should be. I would rather you hold for your argument to the jury the fact situation as to the weight of the testimony.

Mr. SIMANDL. Oh; I am not doing that. I think we will save time if I may suggest, if the Court please, that I just go through them briefly, and then maybe we can clear up a lot of situations.

* * * * *

NEWARK, N. J.,
Friday, March 31, 1972.

(Trial resumed pursuant to adjournment.)

(Counsel present as before stated.)

Mr. SIMANDL. At the Court's suggestion Mr. Stanziale and I met and discussed the evidence and several counts of the indictment with a view of having the Government announce which of the counts they intended to abandon and dismiss, and which they intended to proceed upon.

If I may state the situation, and if I don't do so accurately, I assume Mr. Stanziale will voice his objection. I understand the Government consents to dismiss of indictment 7-C, counts 1, 6, and 7.

Mr. STANZIALE. That will leave counts 2 and 3 in; that is as to Laudani.

Mr. SIMANDL. You consented to a dismissal of counts 1, 6, and 7, which involve Giovanni Roberti.

The COURT. Well, we did not touch Roberti.

Mr. STANZIALE. That is right.

277a Mr. SIMANDL. I was going to make a further announcement, if the Court please. In connection with the same indictment, 7-C, the Government intends to move as against Laudani counts 2 and 3; and consents to dismiss counts 4 and 5 as to Laudani.

The Government intends to move, as against Rossi, counts 2, 3, 4, and 5 of indictment 7-C?

Mr. STANZIALE. All right, we agree on that.

Mr. SIMANDL. With respect to indictment 8-C, the Government announced that it intends to rely upon count 1, as to Laudani; and consents to a dismissal of counts 2, 3, and 4 of that indictment.

The COURT. 2, 3, and 4?

Mr. SIMANDL. 2, 3, and 4 of that indictment.

Mr. STANZIALE. That is right.

Mr. SIMANDL. The Government intends to proceed on the four counts in that indictment as against Rossi.

Mr. STANZIALE. That will be counts 1, 2, 3, and 4 as to Rossi.

Mr. SIMANDL. Indictment 9-C we will pass for the moment, because there is a discussion with respect to that.

Indictment 10–C. The Government consents to the dismissal of all of the three counts as against Laudani; but intends to proceed with respect to all three against Rossi.

Indictment 11–C. The Government intends to proceed with respect to counts 1 and 2, with respect to Laudani; and consents to a dismissal of counts 3, 4, and 5, in that indictment, with respect to Laudani. The Government intends to proceed with respect to counts 3, 4, and 5 as to Laudani; and consents to a dismissal of counts 1 and 2 as to Rossi.

278a Mr. STANZIALE. That is right.

Mr. SIMANDL. Now, that leaves to be considered by the Court the matter which we had the stenographer read to us, the evidence pertaining to indictment 9–C, involving one Tomasello.

* * * * *

The COURT. I have your point, but I can't agree with you. You have expressed it with clarity and force, but I don't think it is logical. I will overrule your motion and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Mr. STANZIALE. Now, for the record, under indictment 9–C, the counts that your Honor is ruling on are 7, 8, 9, and 10; and that is the same as to Alfredo Rossi. Is that right, Mr. Simandl?

Mr. SIMANDL. Yes; but there are other counts in the indictment.

Mr. STANZIALE. The first one I am dismissing as to Lamastra.

The COURT. Begin again with your counts.

Mr. STANZIALE. Count 1 deals with Lamastra; there has been no proof as to Lamastra. Count 2 is for Lamastra, and I consent that that goes out. Count 3 is for Lamastra, and I consent that that goes out. Count 4 is Lamastra, and I consent that that goes out. Count 5 is Lamastra, and I consent that that goes out. Count 6 is Lamastra, and I consent that that goes out.

Now, count 7 is in. That is Alfio Tomasello. Count 7 is going to the jury.

279a The COURT. 1, 2, 3, 4, 5, and 6 are out?

Mr. STANZIALE. Out.

The COURT. Counts 7, 8, 9, and 10 are in?

Mr. STANZIALE. Counts 7, 8, 9, and 10 are to be submitted to the jury.

The COURT. Of course, you have the benefit of your point of law that you raised on the record.

Motions for Acquittal

Mr. SIMANDL. Now, I want to make my motions as to what the Government now contends it is going to move or rely upon. In other words, as I made my motions before, it was before the Government had made certain elections with respect to counts. Now, I would like to merely make my motions for the record, if the Court please, in this respect: I make a motion, if the Court please, at this time, with respect to the indictments and the several counts thereof which the Government has announced it intends to rely upon in this case, in behalf of the defendant, for a directed verdict of acquittal upon the grounds and for the reasons stated both in my previous motions to quash and the motions made for a directed verdict of acquittal at the close and end of the Government's case, and ask that this motion be considered as if I had spread each of the particular grounds and reasons mentioned in those motions more particularly in the record at this time.

I further move for a directed verdict of acquittal on the ground that there is a variance between the allegations contained in the indictment and the respective counts thereof and the proof offered in support thereof, particularly in that the Government has made allegations of separate and distinct offenses in separate and distinct counts in each of the indictments, and in support thereof, have attempted to prove a continuing offense or threat, 280a in substantiation thereof, which is but, in the eyes of the law, punishable as only one offense, and can only be the subject matter of a single count or single indictment in each instance where an employee is named. For that reason, I ask that the Court require the Government, in each instance where a different employee is named in a separate indictment, to announce which count in the indictment, which single count in the indictment, pertaining to any single employee it will rely upon and no other; on the ground that as to each employee the Government has allegedly proven but one single punishable continuing offense.

The COURT. That is really a resume of some of the motions you have made. I think it is pretty complete. For the purpose of the record, I will rule as previously ruled in each separate motion made. I overrule each of these motions involved in this general motion and give you an exception to each particular motion contained in the general motion, and the general motion as a whole: I might state for the record that the purpose of this ruling is to assure to the defendants that the record is in such shape that should there be any error in any of these rulings, during the course

of the trial, the exception allowed is to inure to any alleged error, because I am very anxious that you have your record complete.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

281a *Government's Closing Address to the Jury*

NEWARK,
Monday, March 16, 1942.

(Mr. Stanziale made a closing address to the jury on behalf of the Government, in the course of which he said:)

Mr. STANZIALE. Then we had Mr. Liotta, a little fellow, who came in and said, "I received the money from one of the workmen, Mr. Siggia. Mr. Siggia gave me the money to bring to Mr. Laudani. He gave the money, and I took it to Mr. Laudani in Long Island, or Staten Island," or some place he mentioned.

Why should Mr. Liotta who did not testify that he gave any kick-back, because we could not bring that out, whether he did or not, but why should Mr. Liotta testify and commit an absolute falsity on this witness stand and say, "I got the money"——

Mr. SIMANDL. May I respectfully interrupt you. I don't like to do this. I think you are in error when you say that these are the parties that testified. They did not so testify. Mr. Stanziale, I think that is where we had our argument before Judge Welsh. I think you are referring to DeCesare, who is also a little man.

Mr. STANZIALE. It is my recollection, ladies and gentlemen. If it does not jibe with yours, disregard mine and let your recollection be controlling; but my recollection is that Vincenzo Liotta took money that he received from Siggia over to Mr. Laudani one time in Long Island or another time at some other place.

(Mr. Stanziale continued his address to the jury on behalf of the Government, in the course of which he further said:)

282a I do not charge that Laudani was the main mover in this case, but I do say that under our system of law as set forth in Title 18 of our Code, of Section 550, it says that anyone who aids or abets, counsels or advises, commands or induces the commission of any act is as guilty as a principal. Therefore I have maintained all during this trial that the main mover of this particular case, as far as we know, was Frank Laudani; and his henchman, who assisted him in aiding and abetting, was the defendant Alfredo Rossi.

Now, you know we must not lose sight of another fact. Sometimes there were a hundred men employed on this job. I am not going to pass any opinion as to whether Laudani got all the money or not; but whether he got it himself or not, I say to you

that he certainly was in a very lucrative racket. Can you imagine for one moment the tribute that was being paid, or was collected? If you believe the story——

Mr. SIMANDL. Now, I am going to object to the story.

If the Court please, these men are accused of a specific offense. Mr. Stanziale has no right to discuss anything but the evidence in this case. He has no right to say to this jury or to anyone else anything respecting what is not proven here. He has no right to talk about what this man customarily did or did not do, or what he might have done, or anything of that sort. He has a right to discuss that sort of thing with respect to the facts in this case, but he has no right to assume facts that could not be and are not in this case.

The COURT. Well, it is summing up evidence after the case has been completed. Counsel on either side has an opportunity
283a and possibly a right to scan it and draw conclusions, and even to conjecture as to what might have been the motive, and what might be true and what might be false, and by analogy in reference to human nature's activities and human nature's tendencies to test out the theory of the prosecution or the theory of the defense.

Counsel for the defendants, in this case, exercised that right by going into the possible motives that actuated these men as one particular fact along the line of conjecture. The District Attorney would have the same right, bearing in mind that after both of you have finished your remarks and the Court has charged, the jury will remember all that was said by all persons and they will make their decision. I don't think I would have the right to stop the District Attorney, and I think that by giving you your opportunity to express your objection and note it on the record and for the jury to hear it is about as far as I can go. I have permitted it for that reason.

Mr. SIMANDL. Exception, sir.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

(Mr. Stanziale continued his address to the jury on behalf of the Government, in the course of which he further said:)

Mr. STANZIALE. Then, the crux of the whole case comes to this point: There were in the neighborhood of 100 men working on this job. Taking all the witnesses that the Government called to testify, and all the witnesses that the Government called and
284a who could not testify, let us say that it averaged about 10 or 15 individuals. Let us say, for the sake of argument, that these other witnesses who were called and could not

testify, would have said that they kicked back money to Laudani in one form or another.

Mr. SIMANDL. That is absolutely improper. That is exactly the thing that I told the jury, and your Honor will direct the jury, not to do. Merely because a person is called on the stand, it gives no right to anybody, not even the Prosecutor, to command that these people assume that they were giving up something.

The COURT. He has not said that. This is the hypothesis now. He is working now only on the hypothesis. Your point covers that, and I will take care of it when I come to it. That is the hypothesis of the District Attorney.

Mr. STANZIALE (to the jury). Now, assuming that that was the fact, that all these people called would have testified, and could have testified, that they kicked back money to Laudani, so that you would have between 12 and 15 persons. If I were accused, and I know if you were accused of an act similar to this, wouldn't you, and wouldn't I have brought the other people that were working on this job to come in and take this witness stand and say, "Mr. Judge, and ladies and gentlemen of the jury, I worked for Mr. Laudani; and during the period of time that I worked I never kicked back to Laudani."

Mr. SIMANDL. I ask that the remarks of the District Attorney be stricken from the record and the Court direct the jury to disregard it. Your Honor knows very well, and the District Attorney knows equally well, that we would have no right by
285a any rules of evidence to introduce the type of evidence and testimony that he now says we should have introduced.

The COURT. I could not tell the jury that, because I don't think that would be quite accurate. Will you excuse me from making any further comments, if you don't mind?

I will overrule your motion and give you an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

(Mr. Stanziale continued and completed his address to the jury on behalf of the Government.)

The COURT (to the jury). Don't discuss the case at lunch hour. Just relax. You will get a chance to discuss it afterwards. We are about to take our lunch and come back and get the charge, and then you will go out and quietly discuss the case. We don't want to have your lunch hour interrupted by a discussion of the case.

(Noon recess.)

286a *Court's Charge to the Jury*

MONDAY, *March 16, 1942.*

AFTERNOON SESSION

(The Court charged the jury as follows:)

Members of the jury, I am going to hand you in a few minutes five bills of indictment; they are 7–C, 8–C, 9–C, 10–C, and 11–C, brought against Mr. Frank Laudani and Mr. Alfredo Rossi. In those five bills of indictment there are a number of counts; and the District Attorney has read to you an itemized list of the counts that the Government is relying upon for conviction in this case, and he has indicated to you by the negation that the other counts are not relied upon and are abandoned. A list of those counts relied upon and abandoned will be given to you by the Clerk of the Court when you go out, so you can have them for your guidance in coming to a conclusion and in the rendition of a verdict.

These two men are jointly indicted. They are not charged with a conspiracy; but they are jointly indicted in these various bills that I have enumerated; and at the outset I should tell you that after you have weighed the testimony, you can acquit both these men; you can convict both these men; or you can acquit one and convict the other, just as the case appears to you to be from the evidence that was presented.

You have listened for a number of days to the unfoldment of this case. It has been ably presented by counsel for the Government and has been ably defended by the two gentlemen who represent the defendants.

Now that you have heard it, the responsibility is going to be yours as to saying wherein the truth lies, so far as we are humanly able to arrive at that truth.

287a Now, in considering the case, members of the jury, the logical thing would be to start right out with the law, the law that is alleged to have been broken by the defendants. Notwithstanding it was read by the District Attorney, I am going to read it to you again. It becomes my duty as the presiding trial judge to outline to you the elements of the case, to give you the law; and to interpret the law applicable at every stage of this case. If I did not do so, of course, I would be failing to discharge my duty, because you are entitled to have that interpretation of the law from the bench; and as it comes from the bench as law, you take it; but then when you have obtained the law from the bench and the facts from the witnesses and listened to all this argument on both sides of the case, then you have absolute

control of this situation, members of the jury. You have absolute control. You, and no one else but you, can say whether these defendants are guilty or not guilty.

Now, what is the law involved? It is embodied in these words: "Whoever shall induce any person employed in the construction, prosecution or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined," the amount specified by the act, "or imprisonment, or both," as specified by the act.

Now, members of the jury, that is the act, the violation of which or the alleged violation of which is the foundation of this prosecution. You are to say whether it has been violated or not. In considering that law, it will be necessary for
288a you, members of the jury, to take a broad and comprehensive view of all the elements involved in the consideration of the case, a broad and comprehensive view of the law, a broad and comprehensive view of the condition of the times in which we live, and a broad and comprehensive view of human nature. That is pretty much involved in a decision of a case of this kind.

This law was passed by the Congress primarily to protect the United States Treasury. There has been various grants and appropriations of millions of money by our Federal Government to construct state public enterprises, great structures, dams, public buildings, bridges and tunnels; and work of the most gigantic nature has been undertaken by our Government, beginning about ten years ago, for the purpose of improving conditions in the United States materially and financially. In appropriating these large sums of money, they sometimes contributed a part to the erection of these great structures. Sometimes state and municipality participated jointly with the Federal Government; but the Federal Government, when it was appropriating this money for structures of the kind that we are discussing, in order to be sure that its money would go properly into the hands of the persons performing the duties for which they were paid, they wanted to make sure that no persons, or no person, or no corporation would require a person working on public works, in whole or in part, to return any part of the employee's wages, in order that he might keep his job or obtain his job.

Now, all of you in that jury box are old enough to know and remember the economic stress that we underwent since the year 1929; and we know that our Government, irrespective of partisan-

ship, was seeking a way to maintain some semblance of economic level to living conditions in this country of ours; and in order to prevent the wage scale of the American working man and woman
289a from being brought down to a starvation level, these great enterprises were undertaken and these efforts were made, by your Congress and my Congress, to guard against a violation of the principles or the objectives that Congress had in view. That is somewhat in brief the background of this legislation, and I give you that background so that you can take a complete picture from this case, from its genesis to its close.

Now, before addressing myself to the evidence that was given in the case, discussing the case from the standpoint of the picture that was unfolded, I first must give you very specific instructions as to some of the cardinal principles that must govern you in a deliberation of this kind.

These instructions that you are about to get, members of the jury, are so essential and so vital, that if the Court failed to charge you with respect to them, or improperly charged you, then later on the Court would have to grant a new trial. They are absolutely vital. Most of you, I presume, have heard these principles expounded before, both by the bar, and the judges who have presided in this court, or over the trials.

Now, the first thing I would like to discuss for a minute is what is known as the presumption of innocence. You have heard that term. You have heard it long before you came into the jury box. Maybe it meant something very significant to you; maybe it did not. Whether it did then or not, it is bound to have significance now; because you are going to apply it. You see, it is not an academic matter now; now it is an actual reality you have to face. "Do I understand what presumption of innocence means," is what you are going to ask yourselves now; and it is my duty to see that you do. It does not take very long to explain it. It has to be explained clearly and fully to you.

Now, the presumption of innocence means just this. I am going
290a to try to put it in just the ordinary language that we, outside the bench in daily conversation with each other use and understand. The presumption of innocence means just this, members of the jury: These two men that come in here, I guess none of us has ever seen before. I don't suppose you have, and I have not. They are two men chosen from the one hundred forty millions of our population and brought on trial here before you. We don't know them. We have a perfect right, and it is our absolute duty, to regard these men as being completely innocent of this charge until the Government proves them guilty of it beyond a reasonable doubt. Imagine if another rule prevailed and

by the mere fact of an indictment or an information being brought against them they were presumed not to be innocent; but the mere accusation against these men would mean that in your minds and in the mind of the Court was the thought that they are guilty, or they would not be here. Suppose we cast upon them the burden of proving their innocence. You see what a terrible condition it would be? How cruel and unfair it would be, and how illogical. There is nothing unreasonable in that requirement of the presumption of innocence. That is what that presumption of innocence means; they are presumed to be innocent of this crime until they are proven guilty beyond a reasonable doubt. That reasonable doubt and that presumption remains with them throughout the length and breadth of this trial until you finally record your verdict and it is directed by the Court to be accepted. Now, please bear that in mind.

Now, we have referred to the burden that is cast upon the Government to prove its case beyond a reasonable doubt. What does that mean? The old custom is: Who asserts must prove. The Government asserts, charges these men are guilty of doing these various things. You have a right, each and every one of you collectively and individually, to constitute yourselves an interrogation point and say, "Show me." That is your duty. Your mental attitude, "Show me wherein these men are guilty." If the
291a Government can't meet that test it had better be thrown right out of court, because you could not have justice unless a doctrine of that kind prevailed. That duty rests on the Government throughout the length and breadth of the trial. Bear in mind that the Government has to prove its case beyond a reasonable doubt according to law.

Now, we come to another great principle, that doctrine of reasonable doubt. What is that? You can't say, prove beyond any doubt. There is not anything worth discussing or arguing about in this whole wide world that can be established with absolute certainty beyond any doubt, a doubt from the cradle to the grave. There is always uncertainty and doubt; doubt in our social relations, doubt in our spiritual relations, and we all know what a dreadful thing this doubt is. Therefore if we required the Government to prove beyond any doubt, the Government would never establish its case. The law is not unreasonable. It says that the Government must prove its case beyond a reasonable doubt. Reasonable doubt has been defined by our Appellate Court to be what I am going to quote now. The language is not my language. It is the language of the Appellate Court. It is defined to be such a doubt as arising from the evidence—mind you, arising from the evidence—which causes or would cause an ordinary man or woman to hesitate in coming to a

conclusion in the ordinary affairs of life. You will remember it says it must arise from the evidence. You can't conjure up the doubt in your own mind just to get rid of a responsibility. The doubt must come from the testimony or lack of testimony, because the failure to prove all evidence can create a doubt, a reasonable doubt, of course, either by the absence of proper testimony or testimony of a positive nature proving innocence. The testimony must come from the witness stand. That is what is known as reasonable doubt.

Now, then, there is another principle equally important as the others. That is what is known as character evidence. 92a We call it character evidence, members of the jury. It is really not character evidence; it is reputation evidence. It is evidence of reputation, because reputation is what other people think we are; and character is what we actually are. Sometimes we don't even know our own character, but we will get a hundred people who will give us a reputation, good, bad, or indifferent. Nobody actually knows another person's character, because they can't read the human heart and mind; but by man's actions, and the course of conduct throughout the years, men establish a reputation and when coming into court, as a figure of speech or as a phrase, we use the phrase "character testimony." Therefore, if there are any grammarians in the jury box, don't think that that term is loosely used by the lawyers and Court. Lawyers and judges know the distinction between character and reputation, but the term is probably better understood if it is just called character testimony. Now I will explain the significance of it. It means this: The testimony that a man brings to show his good character, or his good reputation, is substantive testimony. That is just the same kind of testimony brought in by the defendant as any other evidence he would produce. A defendant brings this type of testimony in which he desires to present it. He is not obliged to do so. In this instance they have both presented what is known as character testimony. That has been brought in by the defendants, and it is your duty to look at the witnesses who testified and see whether or not they had opportunity for knowing these men's reputations and whether they were telling the truth, based upon your opportunity to observe; and if you believe that they were able to testify as to their good character and good reputation, and testify truthfully, you take that in as established evidence as coming from the defendants, 93a and put it in the scale upon which you put the evidence that is in his favor and give it the same weight as any other evidence that he would produce on his side of the case.

Now, gentlemen of the jury, they are the cardinal points. They must be in your hearts and in your minds before you deliberate into

the evidence. The main thing is to get yourselves into such a mental attitude that you can divest yourselves of every bit of prejudice and every bit of bias that you have. Remember that you are sitting in judgment on your fellow man. You are deciding a case between your great Government on one side and individuals on the other hand, and you are seeking to establish the truth. Follow that silver string of truth from the beginning to the end, and where it comes out at the end will be where you want to come to collectively in your combined judgment. When you have done that, then you have done all that humanity can expect of a human tribunal. It is pretty hard to do it. It is pretty hard to do it when racial prejudices or social or economic bias creeps into it. We don't realize how prejudiced and bigoted we can become until we are put to the test; but I am sure, being here day after day, watching you, I am sure that you are just going to be like millions of other good Americans, wholesome, free from bias, and unbigoted in your pursuit of the truth, no matter what may be your views on some of the economic measures that were brought about by any condition in your minds in these times as to our relationship to persons overseas, with other nationalities. That has not any place in our hearts when we are deciding anything that requires justice. We can have antagonisms in a proper field, but when we are dissociating the sacred vessels to determine justice, why anything that would creep in like that would be a profanation, and it is above, and should be above the ability of an American jury to entertain anything so ignoble.

294a Now, you have had the law and you have the principles that must govern your deliberations; and you are coming down to a fact situation. Some of you have probably gone through that Lincoln Tunnel. The first time I ever went through the Lincoln Tunnel was a couple of weeks ago, after I came up here in January. I went through there to look it over, not knowing anything about this case, not thinking I would have any litigation involving the Lincoln Tunnel. I came out on the Jersey side and then went back again, and I looked at that beautiful stonework. I was greatly impressed by the beautiful piece of masonry. I don't know whether any of you have ever seen it or not, but I was really lost in my admiration of it; and I wondered who conceived it and who executed it. I have been looking at masonry in public buildings in my active career for forty years; and I think that is the proudest piece of masonry, and it impressed me. Now, here I am, sitting as a trial judge in a case where the men who laid that work, and the contractors who got the contracts, and the foreman who superintended that job are involved in a violation of our laws. That stonework was put up by these men who testified. You heard them. You saw them. Nearly every one of

them came from the other side, from Italy. It is very interesting to hear them tell how they started in at twelve, thirteen, and fourteen years of age. The parts of Italy that some of these men come from have some of the most wonderful stone quarries in the world; and work of these men are signs and centers of artistic achievements of stonework—stonework of the greatest representative sculptors. The world has to turn to Italy for its master workmen in stonework. Now, those are the men who testified. They are not only artisans, they are artists. Nobody who wasn't an artist could have done that kind of work. Whether they speak English fluently or not makes no difference. You saw them testify.

295a How did they impress you? Did they impress you as men who were telling the truth? Did they impress you as men who were filled with vengance? Did they impress you as men who were testifying with overdue color in their testimony? Were they overly emphatic? Were they painting a glowing picture against the man who had been their foreman and his assistants? If they were, you take that into consideration. If they were not, also take that into consideration.

You will have to go out in your mind's eye, now, and see this picture in its reality.

These men were known in their trade as masters of their craft. Their foreman, Mr. Laudani, is one them, he is an artisan himself; and Mr. Rossi is also. Mr. Laudani was the foreman; and I think we can say that it is almost agreed upon that he had the power to hire men and probably discharge them if they were found incompetent. It was so testified that he has the power to hire and fire, and that these men came to him for jobs and he put them on. Things went along and there was no complaint. Whatever was done in the way of these alleged violations, for some time, was kept quiet for the parties. Now, was that natural that it should be kept quiet? Would it be reasonable to except that these men would pay any kick-back and then make no complaint to the union or to the employer?

Now, why do we ask you to consider that for a moment? We have here to consider the relationship of the parties. These men were all members of the union representing their craft, the American Federation of Labor. Mr. Laudani was their president, or occupied a high position in one of the unions, No. 78, I think it was.

Now, then, ask yourselves: Would these men go to their union and complain about their foreman, the foreman being Mr. Laudani, and also holding a high position in the union? You

296a have a right to ask that, members of the jury, as to what motivated these men as to why they did or did not do something.

Another element enters into it that I think you should be asked to consider. Counsel for the defendants has introduced evidence to the effect that there was some labor dispute, some rivalry existing between Mr. Laudani and Mr. Mazzola. We have not seen Mr. Mazzola in the flesh in this picture. He had not appeared in any way by either side producing him; but it would not be fair to ask you to consider the case without considering this element that counsel for the defendant has introduced. He tells you, through witnesses, that there was an election in which Mr. Mazzola aspired for a certain position, and Mr. Laudani aspired for the same position; and it was what he termed a very hot election. Mr. Laudini won, and Mr. Mazzola lost; and in consequence, bad feeling was stirred up; and this charge, which the defendant says, is a trumped up charge, was brought against these defendants. You have a right to ask yourselves some questions about that. Bear in mind that you did see these witnesses, and had an opportunity to see how enthusiastic, over enthusiastic or not, these witnesses were. You have a right to ask yourselves "How active were these men in this union?" Some of these men said that they only went down to the union to pay their dues. Some men didn't know Mr. Mazzola. Some knew who he was. Some didn't know Mr. Laudini very well. You have that picture before you.

Now, then, ask yourselves whether or not, as an outcropping of this election rivalry there was such bad feeling stirred up that Mr. Mazzola had enough influence for evil—not labor influence, but influence for evil—to stir these men up to make a false charge against the defendants.

Now, it has been brought before you in evidence that Mr.
297a Rossi and Mr. Laudini are not the only defendants here. There are a number of others; but we are only trying these two.

Now, ask yourselves what reason would there be for the making of this general charge against others? Was that still attributed to the outcropping of this election contest, or was it not? Mr. Mazzola, as I say, has not appeared; and while in the presentation of the case before you, when counsel made a motion to strike out such testimony, the Court stated, in your hearing, that we were not trying a labor union case and that to try it—a labor union case—would result in a red herring being dragged across the trail.

Now, members of the jury, I would not want you to get into your minds that the fact that there was an election contest is a red herring. That is not a red herring. That is something that you have a right to consider; but for us to go into the ramifications of a labor quarrel would be to cause us to follow a trail other than the one we are committed to follow up. We are charged

with following this trail. We are not concerned with the ramifications of that election contest. The Court was at that time very clear to make his meaning plain. So the only thing you have to consider in that election contest is this: Whether or not, by reason of the alleged bad feeling that cropped up, as the result of the election, these men who testified were motivated to testify falsely against these two defendants here on trial. Is that plain? That is what I am trying to make plain to you, because motive is always a subject of inquiry by a jury. Whatever we do is as a result of some motive, and you are to say whether or not this motive was proper.

You have a right to ask yourselves another question inasmuch as it has been thrown into the jury box by the defendants.
298a They are laying considerable stress on the activities of Mr. Mazzola. You have a right to inquire—having seen these witnesses now—whether Mr. Mazzola was active at all in the matter, and what form did his activities take? Did his activities take some form of obtaining witnesses to perjure themselves against another man, a man who had been their foreman? Did the activities take the form, if he thought or knew something was wrong in connection with these kick-backs, of tipping the authorities off, and then started these wheels in motion? What form did it take? As it was testified, he had two courses that he could have taken. He could have tipped the authorities off if he knew of any irregularity, or he could have taken the course of obtaining perjured witnesses and framing the men. It is for you to determine what course he took. You are to say what are the logical and fair conclusions to be drawn from the inferences.

Now, the question of law with reference to the right of the Federal Government to conduct this case, has been raised by the defendants. Members of the jury, it is my duty to charge you that under the law if you believe the testimony in this case you can find these men guilty. The Court holds that the federal law has been violated if these facts are true. The federal law covers this type of a case. I won't amplify that any further, but to give you that just as a charge of the Court on the question of law: The federal law governs here. This indictment is properly founded and if substantiated by testimony, in your opinion, sufficiently to warrant in finding the defendants guilty, you can find them guilty under the law.

Now, the defendants have given me a number of points for charge. I may have some other matters that I just want to briefly refer to before turning the case over to you, after I read those points; but I feel that it would be a good time for me to read
299a them now, because I have touched on the question of the applicability of the law; therefore, I think it would be logi-

cal for me to take up the question of law raised by the defendant in his points.

Now, as I go along here, from No. 1 down, if you think I have sufficiently covered any point that you have asked me to charge on, if you will indicate it, I will pass to the next one. If you feel that I have not sufficiently covered it, why, I will be glad to cover it in the language of your point; because I have affirmed nearly all of them.

The COURT. No. 1. Well, I covered that very briefly in my opening remarks to the jury.

There is no importance to be attached to the finding of a bill of indictment, members of the jury.

I tried to cover that. Do you want me to go over that?

Mr. SIMANDL. Not that particular one. I tried to fix them in connection with these particular charges. I think the first was the beginning, and I remember that; but frankly, after that I did not follow them very carefully.

The COURT. The second one is where you asked about reasonable doubt. I think I have covered that adequately. What do you think?

Mr. SIMANDL. Well, if your Honor please, your definition of reasonable doubt does not conform with mine.

The COURT. In what respect?

Mr. SIMANDL. Well, I think the definition that I gave to your Honor is the correct definition.

The COURT. Well, I will read that.

The jury are instructed that in criminal cases, guilt must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the Government. The law does not require of the defendants that they prove themselves innocent, but the law requires the Government to prove the defendants guilty in the manner and form as charged in the indictment, beyond a reasonable doubt, and unless they have done so, the jury must acquit.

300a I affirm that point. That is absolutely correct.

How about No. 3?

Mr. SIMANDL. I am not going to stand on that particularly, if the Court please.

The COURT. All right.

How about No. 4? I think I covered that more fully than you did.

Mr. SIMANDL. I am not going to question that either.

The COURT. No. 5: You are instructed that to warrant a conviction in this case the proof must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendants, or, in other words, the facts proved

must all be consistent with and point to their guilt only, and inconsistent with their innocence. The hypothesis of guilt must flow naturally from the facts proven, and be consistent with them all. If the evidence can be reconciled with the theory of both innocence and guilt, the law requires that the defendants be given the benefit of the doubt, and that the theory of innocence must be adopted.

I affirm that point. That is taken from a celebrated decision, members of the jury.

No. 6: Reasonable doubt is that state of the case, which, after an entire comparison and consideration of all of the evidence, leaves your minds, as jurors, in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge.

I affirm that charge.

No. 7: A reasonable doubt may be engendered by lack of evidence. If the Government has failed to produce evidence sufficient to satisfy you of the guilt of the defendants beyond a reasonable doubt, they are entitled to an acquittal, even though that doubt may be engendered merely by the lack of production of evidence by the Government.

I affirm that.

301a No. 8. Mere suspicions or speculation, however strong, are not a sufficient basis for a conviction. Circumstantial evidence must be of such a character as to satisfy the jury of the defendants' guilt, and exclude every other hypothesis to a moral certainty beyond a reasonable doubt; evidence creating mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt.

I tried to cover that in my general charge, members of the jury, but I will give that in the wording submitted by Mr. Simandl. I affirm it.

No. 9. If the circumstances admit of two inferences, one that the defendants are innocent and the other that the defendants are guilty, you must adopt the conclusion of innocence and acquit the defendants.

Any other doctrine than that would be a violation.

No. 10. Where the testimony admits of two inferences, one of guilt and one of innocence, it is your duty to adopt that inference which is consistent with innocence.

I affirm that point.

How about No. 11? Do you think I covered that?

Mr. SIMANDL. Your Honor said that they were to give it the same weight that you give to the other testimony the defendants produced.

The COURT. Then I told what it meant. I will read it in your language:

No. 11. The defendants have produced evidence to prove they possess a good reputation as peaceful and law-abiding citizens. It is your duty to consider all of the relevant testimony, including that relating to the defendants' good reputation, and if on such consideration, there exists a reasonable doubt of their guilt; even though that doubt may be engendered by their previous good repute, they are entitled to an acquittal.

302a I affirm that point.

No. 12. Each count in the indictment represents a separate charge against the defendants named therein. The defendants are entitled to have you consider each count separately. If you find that there is a reasonable doubt as to the guilt of the defendants on any count, you must find them not guilty of that count.

I did not touch on this.

No. 13. There has been presented to you by witnesses, testimony of conversations had with persons out of the presence of the defendants. Such testimony can have no binding force as evidence against the defendants, and I therefore direct you that in your consideration of the evidence in this case, you must disregard all such testimony of conversations held between others not in the presence of the defendants.

You were here when we had that ruling and I affirmed it; and I affirm it as a point in this charge.

No. 14. Though facts and circumstances brought out of the proof of a case, may create a suspicion in the minds of the jury as to the guilt of a defendant, no man is to be convicted of a crime upon the mere suspicion that he committed it.

That point is affirmed.

No. 15. It is the duty of counsel, in the trial of a criminal case, to object to the admission of testimony which he deems is improper, and even though the Court may disagree with counsel and overrule the objection of counsel, you, members of the jury, are not to draw any inference adverse to the defendants solely because counsel objected to that evidence.

I affirm that point, members of the jury. It is counsel's duty to object to any testimony that he considers improper or irrele-

303a vant, or inadmissible for any legal reason. He would be severely censored if he did not. Counsel has not been guilty of negligence, I think we can all agree to that.

No. 16. Although there is testimony that the defendant Frank Laudani was working for the Cape Ann Granite Company, as foreman or superintendent, and that he had authority from that

company, in its behalf, to hire and discharge workmen, there is also testimony from which you may find that Laudani's employment as foreman or superintendent for the Cape Ann Granite Company was for an indefinite term, and I charge you that if you find the defendant Laudani's employment was for an indefinite term, the Cape Ann Granite Company had the power to discharge Laudani at will, any time, with or without cause.

I affirm that point.

No. 17. An employment for an indefinite term is one where the compensation is measured at so much a day, week, or month, and the contract of hiring does not fix a specific date for its termination.

I affirm that point.

No. 18. There were certain witnesses who were called by the Government, who testified that they worked for the Cape Ann Granite Company on the Weehawken Plaza connection of the Lincoln Tunnel, at Weehawken, New Jersey. The Government attempted to ask these witnesses with respect to matters which were not proper and material to this trial. This Court did not permit such questioning. You may weigh and consider only such evidence as these witnesses actually gave.

Now, Mr. Simandl, I will read the rest of that charge and affirm it if you want me to. Do you mind looking at it again and see whether you want me to read it or not, in view of what took place in the court room?

Mr. SIMANDL. I think we are entitled to it under the circumstances.

304a THE COURT. All right.

(To the jury:) You have no right, and should not attempt to hazard a guess, as to what those witnesses might have said, if the Court had not excluded the questions. Furthermore, you have no right in your deliberations to assume that had they been permitted to testify, they would have testified adversely to the defendants, solely because the Government called them to the witness stand.

I affirm that point.

No. 19. The charge against the defendants in each count of the indictment, is made up of certain material elements, each and all of which the Government must prove beyond a reasonable doubt. If the Government proves certain of such elements beyond a reasonable doubt, but fails to prove one of such material elements, beyond a reasonable doubt, the Government's case as to that count fails, and the defendants must be acquitted of that count.

I affirm that. I thought I covered that, but I give it to you in Mr. Simandl's language.

No. 20. One material element of the charge in each count which the Government must prove beyond a reasonable doubt is, that it must be established that the employee was actually employed in the construction of a public work, financed in whole or in part by loans or grants from the United States. In this connection, you may consider the testimony of the witness Elverson, who was employed by the Port Authority, who, you may find, testified that he was unable to state that any loans or grants from the United States actually financed the work which the Cape Ann Granite Company performed under their contracts with George M. Brewster & Sons, Inc., the General Contractor.

I affirm that point with the explanation that all the testimony in the case as to the financial contribution by the United States Government on this project is in evidence, and you will
305a consider all of it; and if you find from the evidence that this was constructed in whole or in part by appropriations from the United States Government, you may convict these defendants. I give you an exception to my ruling on that.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

No. 21. Another material elements of the charge which the Government is required to prove beyond a reasonable doubt, is that it must be established that the employee gave up a part of the compensation which he was entitled to under his contract of employment. In this connection, you may consider the testimony of the witness Tomasello, who, you may find, testified that as part of his contract of employment, agreed to accept as his compensation, $1.25 per hour, and agreed to return 25 cents an hour, providing he received $1.50 for every hour he worked. You may find that the 25 cents an hour which he claims to have given up, was not compensation to which he was entitled under his contract of employment. If you so find, the defendants must be acquitted of the charges laid in indictment 9-C.

I affirm that point, members of the jury, because you may find anything, because you are absolutely in charge of the situation. I could not say that you could not find anything because if I did, I would be constituting myself the trier of the facts, and not you. I affirm that point with that statement.

No. 22. Another element of the charge laid against these defendants which the Government is required to prove beyond a reasonable doubt, is that it must be established that the defendants
306a applied force, intimidation, threat of procuring dismissal from the employment, or actually indulged in some other

form of similar activity to induce the employee to give up a part of his compensation to which he was entitled under his contract. Even if you should find that the employees gave up a part of the compensation to which they were entitled under their contract of employment, that finding alone would not warrant your convicting the defendants. Before you could return such a verdict you would also have to find beyond a reasonable doubt that the employees were induced to give up a part of their said compensation due to force, intimidation, threat of procuring dismissal from employment, or some other similar type of conduct actually exercised, applied or indulged in by the defendants, or some one acting in their behalf, and if you are unable to so find, the defendants must be acquitted.

I affirm that point.

No. 23. Before there can be a conviction in this case, the Government is required to prove beyond a reasonable doubt, that the defendants, or some one in their behalf, actually applied either force, intimidation, threat of procuring dismissal from the employment, or actually indulged in some other similar activity or conduct, to induce the employee to give up a part of the compensation to which he was entitled under his contract of employment. If you are unable to find that force, intimidation, threat of procuring dismissal or some other similar activity was indulged in by the defendants, they must be acquitted.

I affirm that point.

No. 24. Even if you should find that an employee gave up a part of the compensation to which he was entitled under his contract of employment, and did so because he believed it was expedient, or for his best interests to do so, this finding would not be
307a sufficient upon which to base a verdict of conviction, unless you were able to further find beyond a reasonable doubt, that his act in thus giving up his compensation, was induced by force, intimidation, threat of procuring dismissal from his employment, or some other similar activity actually put in motion by the defendants.

I affirm that point.

No. 25. Before there can be a conviction in this case, the Government is required to prove beyond a reasonable doubt, that the defendants intentionally applied force, intimidation, threat of procuring dismissal from the employment, or some other similar unlawful activity upon the employees, with the design that they give up a part of the compensation to which such employee was entitled under his contract of employment, and, if you are unable to so find, the defendants must be acquitted.

I affirm that point.

No. 26. I decline as stated.

No. 26 (a). I decline as stated.

No. 27. The motive or reason that actuated an employe in giving up a part of his compensation, is not material unless it is proved beyond a reasonable doubt that such motive or reason resulted from the application by the defendants, of intentional force, intimidation, threat of procuring dismissal from employment, or some other similar activity.

I affirm that point.

No. 28. Even if you should find that the employee thought it was wiser, expedient, or necessary for him to give up a part of his compensation, if the workman's state of mind and act in thus giving up was not due to force, intimidation, threat of procuring dismissal from employment, or some other similar activity actually applied and indulged in by the defendants, there must be an acquittal.

That is affirmed, members of the jury; because if the defendants had made no demands or had done nothing to
308a produce a state of mind in the employees, why, of course, they could not be held guilty for anything, because they would have done nothing.

I affirm that point.

No. 29. I decline.

No. 30. The word "intimidation" as used in the statute, means the making of a person fearful, inspiring, or effecting him with fear, by some display, act or words indicating a willingness to inflict harm or injury. Intimidation may be by threats, by words, or an act calculated and compelling a person to do or not to do something.

I affirm that point.

No. 31. The word "threat" means an offer by act or words, to intentionally hurt or injure one in his person or property.

That is a very fair definition. I affirm that point.

No. 32. The words "or by any other manner whatsoever", as used in the statute, do not mean that a crime is committed within the meaning of the statute, if an employee gives up a part of his compensation to which he is entitled under his contract of employment voluntarily, or without force, intimidation, or threat of procuring dismissal from the employment, but to the contrary, those words or that phrase really means and only embraces other acts, conduct or activity similar to force, intimidation, threat of procuring dismissal from the employment.

I affirm that point.

No. 33. You may find that several of the witnesses called by the Government, testified that neither Rossi nor Laudani spoke

to them with reference to the giving up of their wages, but that they had a conversation with their friends, other workmen employed on the project, which conversation was had out of the presence of either Rossi or Laudani. You may also find
309a that there was no evidence of any force, intimidation or threat of procuring dismissal from employment, or any other similar activity or conduct displayed, offered, or engaged in during such conversations. There is, of course, nothing before you as to what was said by such friends to said workmen during said conversations. You may consider these circumstances when you deliberate as to whether or not the Government has established, beyond a reasonable doubt, its charge that the defendants, by the application of force, intimidation, threats of procuring dismissal from the employment, or by some other act, conduct or activity similar thereto, induced the employees to give up a part of their compensation to which they were entitled under their contract of employment.

This whole question, members of the jury, is a question of fact for you. I affirm that point.

No. 34. You may find that there is testimony by witnesses, called on behalf of the Government, that certain of the employees of the Cape Ann Granite Company allegedly gave up a part of their compensation after they had conversations with co-workers on the project (not with either Rossi or Laudani), and that such conversations took place out of the presence of either Rossi or Laudani. No person can be held responsible for the action or conduct of another, unless he directed, counseled or procured such act. If you are unable to find beyond a reasonable doubt, that the defendant who is charged in the indictment with such act, did in fact authorize, direct, or procure it to be done, the defendant thus charged must be acquitted.

I affirm that point, members of the jury, but I say you have a right to ask yourselves this: Did the receiving of money later by the defendants, after that conversation was alleged to have taken place, throw any light as to what that conversation
310a was? In other words, you have to take the words and actions of all the parties concerned, balance them and weigh them, and find out what interpretation should properly be placed upon the words, and what interpretation should be placed upon the acts. The prosecuting witnesses say they paid these various sums of money. As this point for charge indicates, some of the conversations having to do with the matter took place out of their presence, and between other people. Now then, you have a right to say whether there is any connection between those conversations, the connection coming from the evidence and the receipt,

as alleged, of these moneys. That is all one. The whole question is for you. I affirm that point, but I direct your attention to your right to consider the matter from the angle that I have just indicated.

No. 35. In determining what weight you will give to the testimony of any witness, you have a right to consider whether the witness has an evil or bad motive in giving his testimony. If you find that a witness testifies because of an evil motive, or because of a desire for revenge or vengence, against the defendants, you have a right to attach little or no weight whatever to that witness' testimony.

I affirm that point.

No. 36. The motive, interest or bias that a witness has in testifying, is always a proper inquiry that a jury may make and consider with respect to such witness, in determining what weight, if any, the jury will attach to that witness' testimony.

I affirm that.

No. 37 is declined.

No. 38 is declined.

Now, they are the charges submitted by the defendants, members of the jury. Of course, I recognize that there are many matters in connection with this case that could be talked
311a about, but neither Judge nor counsel can cover all phases.

If the Court attempted to cover every phase to you, it would be not only burdensome, but it would be boresome. The Judge would not attempt to cover all the elements of this case. Counsel for defendants has asked me to charge on those matters which he considers of sufficient importance to warrant him in so doing; and I am treating them as you just heard. Many, many other questions that will naturally arise in your minds as you go out, rise in mine now as I am talking to you. They have arisen as the case proceeded, but you could not discuss them all. They would go on to infinity before we got through, and it would not do any good because you are going to raise different questions. You, in your twelve methods of approach, will raise any question that comes up before you, and resolve it

Now, the Government has some points to charge. Have I covered your points?

Mr. STANZIALE. I believe you have, your Honor. I will waive my points.

The COURT. Members of the jury, your verdict must be unanimous. I am going to ask that the two alternate jurors be kept separate and not discharged. You will be kept until the verdict comes in; and please see that the alternate jurors are not present in the room to take part in the conversation with the twelve that are going out to consider the case.

We may not have to use those alternate jurors, but, if some one of the twelve in the jury room, in their deliberations, should drop dead, or become seriously ill, or be taken with appendicitis, or something, we then would be met with a question of what we should do. We have an alternate juror who many judges believe could be put right in the jury box, so that there won't be a mistrial, and in doing so we feel that we would be conforming with the intentions of the courts in providing these alternate jurors.

Exceptions to Charge

312a Now, are there any exceptions, Mr. Simandl? If you have, state them right here so the jury can hear it, and I will see what I can do.

Mr. SIMANDL. If the Court please, I respectfully except to that portion of your Honor's main charge wherein your Honor spoke of the objectives of Congress in passing this legislation.

I do not question that part of your Honor's statement which was to the effect that the Act was passed primarily to protect the United States Treasury. I am in complete accord with your Honor when your Honor said that. I do say, however, that the other matters to which you referred are beyond the ability of Congress to legislate.

The COURT. Yes. Well, that is covered by your point, isn't it?

Mr. SIMANDL. Well, I want to make sure that your Honor understands the general nature of my objection and that part of the charge to which I am objecting.

The COURT. Yes.

Mr. SIMANDL. Now, if the Court please, your Honor made reference to the fact that Mr. Laudani was president of Local 47, holding a high position——

The COURT. I think it was 78.

Mr. SIMANDL. Well, it happens to be 47.

The COURT. Make it 47.

Mr. SIMANDL. Well, anyway, that is not the proposition. Your Honor said: At the time these events took place.

I want to point out to your Honor that the men said that they were hired sometime in January of 1937, and between January and July of 1937. When practically all of those alleged conversations took place, Mr. Laudani was not an official in any union.

The COURT. Well, members of the jury, will you bear in mind that Mr. Simandl says that, that is the fact.

313a Now, it is his case. He has prepared it; and if he states to me that that is the fact, I will take that for granted, and I will ask you to take it for granted; because after all, you

are the judges of it; because if I make any misstatement based on my sheer recollection of testimony, why, don't pay any attention to that. You are the judges of that, not I.

Mr. SIMANDL. Your Honor has asked this jury to consider what interest these men who testified on the stand may have had in making a general charge against others not on trial but may have been named in these indictments.

Those men are not before this Court. The Government elected to sever them, so that their trial is not before you, and the evidence in their case is not before you; and the motives that the others may have had, as against them, does not appear, and for that reason, if the Court please, to ask the jury to inquire into matters that have nothing to do with this issue is asking them to enter into a sphere of speculation which I don't think the jury is permitted or required to do to the great prejudice of these defendants.

The COURT. Well, one or more of the witnesses who testified, testified that he was a defendant; and you yourself made mention of a defendant, Viaggio.

Mr. SIMANDL. No, no. I spoke of DeCesare who took the stand.

The COURT. But it is just a phase of the question that the jury has a right to consider, because they are trying to get the motive, and I brought that out for that reason only.

Mr. SIMANDL. I take an exception.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

314a The COURT. Great stress was laid on the fact that Mr. Laudani was being singled out as a victim of Mr. Mazzola's wrath.

Mr. SIMANDL. That is right.

The COURT. Now, the jury has a right to say, "Were there others singled out?"

It is part of the picture.

Mr. SIMANDL. Well, the fact is that the others are not in the trial.

The COURT. You note that.

Mr. SIMANDL. May I have an exception to that portion?

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

I ask an exception to that part of your Honor's charge merely with respect to the use of the word "red herring", and what your Honor spoke about that in reiteration.

The COURT. What was wrong about that?

Mr. SIMANDL. Well, if the Court please, I have said throughout that the remark was most unfortunate. I say that with the greatest respect for your Honor.

The COURT. All right, note your exception.

Mr. SIMANDL. I ask an exception on that.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Mr. SIMANDL. I ask an exception to that part of your Honor's charge where your Honor asked the jury to speculate as to what Mr. Mazzola's activity may have been to tip off the authorities; and what form did his activities take.

315a. May I have an exception to your Honor's remarks about that?

One would be sheer speculation, and the other is in evidence before the jury.

The COURT. Wait a minute. Is that strictly accurate? There were two courses that he could have taken.

Mr. SIMANDL. There is no evidence that he took the other course. As a matter of fact, there is evidence as to what course he has taken.

The COURT. Note your objection.

Mr. SIMANDL. Yes.

The COURT. Exception allowed.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Mr. SIMANDL. Now, may I except, if the Court please, to that part of your Honor's charge wherein your Honor said that if the witnesses were believed these defendants could be found guilty in order to state the law. I disagree.

I take an exception to your Honor's remarks.

The COURT. Exception allowed.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Mr. SIMANDL. I take an exception to your Honor's refusal to charge the requests which your Honor declined to charge; and also take an exception to those requests which your Honor charged, with an explanation; and that part of the charge which your Honor gave as an explanation.

316a May I have an exception in each instance where your Honor gave an explanation to the requests of the charge?

The COURT. All right.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE,
U. S. D. J.

The COURT. See if we have covered everything. Mr. Simandl.

Mr. SIMANDL. I think so.

The COURT. I think the record is all right.

Have both sides agreed as to those counts which are abandoned and those counts which are pressed and are to be sent to the jury?

Mr. SIMANDL. I have no objection to that. I would like a chance to look at the memorandum.

Mr. STANZIALE. Yes. I am sending up for them now.

Mr. SIMANDL. Yes, I think we can send them to the jury as soon as we can approve it.

The COURT. Mr. Stanziale, do you want your points to charge marked in the record?

Mr. STANZIALE. Oh, I will withdraw them. They don't have to be in the record.

They have been covered, your Honor, so there is no use.

The COURT. You did read that in before.

Mr. STANZIALE. Yes, I made that in my opening remarks.

Indictment 7–C would be Laudani on counts 2 and 3. All other counts are abandoned.

Rossi, Indictment 7–C, counts Nos. 2, 3, 4, and 5.

Indictment 8–C, Laudani, count 1. All the rest are abandoned.

317a. Rossi, Indictment 8–C, 1, 2, 3, and 4.

Indictment 9–C, Laudani, counts 7, 8, 9, and 10.

Rossi, Indictment 9–C, counts 7, 8, 9, and 10.

Indictment 10–C, Laudani, no counts. All counts as to Laudani abandoned.

Rossi, Indictment 10–C, counts 1, 2, and 3.

Indictment 11–C, Laudani, counts 1 and 2.

Rossi, Indictment 11–C, counts 3, 4, and 5.

(The jury retired at 3:50 o'clock P. M. and returned into the court room at 6:30 o'clock P. M. and rendered a verdict finding the defendant Laudani guilty as charged on all counts; and finding the defendant Alfredo Rossi not guilty.)

The Court: The verdict will be recorded.

Thank you very much for your consideration; and the Court appreciates the attention that you gave to this case.

The case is almost national in its significance, and I appreciate the thought that you have given it; and I can appreciate the discrimination.

I don't have to comment on the jury's verdict. It is not within the province of the judge, but still I say I can understand your discrimination. You know probably what I mean.

Mr. STANZIALE. I have an application to make to the Court, your Honor.

The COURT. All right.

Mr. STANZIALE. Judge Welsh, in relation to the defendant, Frank Laudani, who has been found guilty, I am satisfied that the bail as posted is sufficient.

I do not care to press my motion or press my application that he be taken into custody. I feel, at the present time, that in view of all the circumstances in the case that he be continued under the bail that he is now under.

318a May I inquire, Mr. Simandl, just what that bail is?

Mr. SIMANDL. $3,000 bail.

Mr. STANZIALE. It is sufficient, your Honor; and I move that the defendant be continued.

The COURT. I am in accord with that.

Mr. SIMANDL. Now, how about Mr. Rossi; is he discharged?

Mr. STANZIALE. As far as this indictment, he is discharged; but there are some other pending indictments which I will probably dispense with with the rest of the defendants. I might say, I intend to bring him to trial on the other indictments that are pending.

I am going to move for trial on the other defendants. I don't know what disposition I am going to make as to the rest of the indictments against Mr. Laudani because he has been found guilty.

Mr. SIMANDL. May I at this time reserve my rights to appeal; but merely pointing out to the Court that I believe an examination of the counts, and I believe an examination of the testimony will indicate that there can be no finding of guilt of Mr. Laudani on all of the counts, in the light of the fact that there has been an acquittal of Mr. Rossi.

I think you will find that that is true. I think that the verdict is definitely inconsistent and cannot stand for that reason. It is impossible for it to stand, because there could not be any holding of Mr. Laudani on any of those counts in the light of the acquittal of Mr. Rossi.

The COURT. Well, we will go into that later on, Mr. Simandl; and we will treat it as a very practical matter. I mean there is a principle involved here, and it is that principle that I guess we are more concerned with than anything else here. There is a very great principle involved here, to my mind a tremendous

319a principle involved in this case; and we will all see that we can work out a proper solution of it and to do justice and not violate the principle.

Mr. STANZIALE. As to these five indictments Rossi is discharged, but not as to the others.

Motion for Arrest of Judgment

NEWARK, N. J.,
Friday, March 27, 1942.

Mr. SIMANDL. I move in arrest of judgment upon the following grounds:

1. The indictments and the several counts thereof, are insufficient in law and no lawful judgment can be predicated thereon for the reasons already stated at length in my motion to quash. I respectfully ask the Court to consider this motion as if I had at this time spread upon the record those reasons at length.

2. Upon the ground that the indictments and the several counts thereof fail to charge any violation of the penal laws of the United States.

3. Upon the ground that no violation of the penal laws of the United States, and particularly the statute under which the indictments and the several counts thereof, are supposed to have been based, to wit: Title 40, U. S. C., Section 276–B, was proven at the trial.

4. Upon the ground that this Court is without jurisdiction to punish this defendant in the absence of an indictment charging an offense under the penal laws of the United States.

5. Upon the ground that to punish the defendant for the acts established at the trial would be a violation of defendant's Constitutional rights under the 5th Amendment.

326a 6. Upon the ground that the imposition of any sentence upon the defendant in this case would contravene the 10th Amendment of the Constitution of the United States and permit an unlawful and unconstitutional operation and application of the provisions of Title 40, U. S. C., Section 276–B, the statute under which the indictments and the several counts thereof purport to be laid.

The COURT. Yes. We have substantially covered those reasons on previous days. Those motions will now be spread upon the record in order that the record may be kept complete, and I will overrule each and every one and give you an exception thereto, so that your legal rights can be maintained.

(Which exception is hereby allowed and sealed accordingly.)

GUY L. FAKE.
U. S. D. J.

Mr. STANZIALE. Now, the Government moves for sentence, your Honor.

* * * * *

The COURT. I am going to make the imprisonment nine months instead of five years. I am doing that so that the contracting world, and the labor world, will know that a workman is inviolate, and the workman's pay envelope is his own.

* * * * * * *

Defendants' Requests to Charge

(Defendants' requests to charge as originally submitted to the Court:)

1. The mere fact that an indictment has been returned against the defendants creates no presumption against them. They
321a are presumed innocent and can only be convicted if the Government produces evidence which satisfies you of their guilt beyond a reasonable doubt. Therefore, during your deliberation, you are not to consider the indictment as evidence against the defendants, or permit it standing by itself to in any manner weigh against the defendants.

2. The jury are instructed that in criminal cases, guilt must be established beyond a reasonable doubt, and the burden of establishing such guilt rests upon the Government. The law does not require of the defendants that they prove themselves innocent, but the law requires the Government to prove the defendants guilty in the manner and form as charged in the indictment, beyond a reasonable doubt, and unless they have done so, the jury must acquit.

3. Before a verdict of guilty can be rendered, every member of the jury must be able to say, in answer to his individual conscience that he has in his or her mind arrived at a fixed opinion based upon the law, and the evidence of the case, and nothing else, that the defendants are guilty.

4. The Court instructs the jury that it is your sworn duty to commence the investigation of this case with the presumption that the defendants are innocent of the crime with which they are charged; and it is equally your duty to enter upon the consideration of each fact and circumstance in evidence, having in your minds at all times the presumption that the defendants are innocent, applying to every such fact and circumstance the presumption of innocence; this presumption is not an idle form, but is a fundamental and important part of the law of the land, and you should act upon this presumption throughout your consideration of the evidence unless it shall have been overcome by proof of guilt so strong, credible and conclusive as to convince your minds to a moral certainty and beyond a reasonable doubt, that the defendants are guilty.

322a 5. You are instructed that to warrant a conviction in this case the proof must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendants, or, in other words, the facts proved must all be consistent with and point to their guilt only, and inconsistent with their innocence. The hypothesis of guilt must flow naturally from the facts proven, and be consistent with them all. If the evidence can be reconciled with the theory of both innocence and guilt, the law requires that the defendants be given the benefit of the doubt, and that the theory of innocence must be adopted.

6. Reasonable doubt is that state of the case, which, after an entire comparison and consideration of all of the evidence, leaves your minds, as jurors, in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge.

7. A reasonable doubt may be engendered by lack of evidence. If the Government has failed to produce evidence sufficient to satisfy you of the guilt of the defendants beyond a reasonable doubt, they are entitled to an acquittal, even though that doubt may be engendered merely by the lack of production of evidence by the Government.

8. Mere suspicions or speculation, however strong, are not a sufficient basis for a conviction. Circumstantial evidence must be of such a character as to satisfy the jury of the defendants' guilt, and exclude every other hypothesis to a moral certainty beyond a reasonable doubt, evidence creating mere probability of guilt is not sufficient; much less is evidence which gives rise to a mere suspicion or conjecture of guilt.

9. If the circumstances admit of two inferences, one that the defendants are innocent and the other that
323a the defendants are guilty, you must adopt the conclusion of innocence and acquit the defendants.

10. Where the testimony admits of two inferences, one of guilt and one of innocence, it is your duty to adopt that inference which is consistent with innocence.

11. The defendants have produced evidence to prove they possess a good reputation as peaceful and law-abiding citizens. It is your duty to consider all of the relevant testimony, including that relating to the defendants' good reputation, and if on such consideration, there exists a reasonable doubt of their guilt, even though that doubt may be engendered by their previous good repute, they are entitled to an acquittal.

12. Each count in the indictment represents a separate charge against the defendants named therein. The defendants are entitled to have you consider each count separately. If you find

that there is a resonable doubt as to the guilt of the defendants on any count, you must find them not guilty of that count.

13. There has been presented to you by witnesses, testimony of conversations had with persons out of the presence of the defendants. Such testimony can have no binding force as evidence against the defendants, and I therefore direct you that in your consideration of the evidence in this case, you must regard all such testimony of conversations held between others not in the presence of the defendants.

14. Though facts and circumstances brought out of the proof of a case, may create a suspicion in the minds of the jury as to the guilt of a defendant, no man is to be convicted of a crime upon the mere suspicion that he committed it.

324a 15. It is the duty of counsel, in the trial of a criminal case, to object to the admission of testimony which he deems is improper, and even though the Court may disagree with counsel and overrule the objection of counsel, you, members of the jury, are not to draw any inference adverse to the defendants solely because counsel objected to that evidence.

16. Although there is testimony that the defendant Frank Laudani was working for the Cape Ann Granite Company, as foreman or superintendent, and that he had authority from that company, in its behalf, to hire and discharge workmen, there is also testimony from which you may find that Laudani's employment as foreman or superintendent for the Cape Ann Granite Company was for an indefinite term, and I charge you that if you find the defendant Laudani's employment was for an indefinite term, the Cape Ann Granite Company had the power to discharge Laudani at will, at any time, with or without cause.

17. An employment for an indefinite term is one where the compensation is measured at so much a day, week, or month, and the contract of hiring does not fix a specific date for its termination.

18. There were certain witnesses who were called by the Government, who testified that they worked for the Cape Ann Granite Company on the Weehawken Plaza connection of the Lincoln Tunnel, at Weehawken, New Jersey. The Government attempted to ask these witnesses with respect to matters which were not proper and material to this trial. This Court did not permit such questioning. You may weigh and consider only such evidence as these witnesses actually gave. You have no right, and should not attempt to hazard a guess, as to what those witnesses 325a might have said if the Court had not excluded the questions.

Furthermore, you have no right in your deliberations to assume that had they been permitted to testify, they would have

testified adversely to the defendants, solely because the Government called them to the witness stand.

19. The charge against the defendants in each count of the indictment, is made up of certain material elements, each and all of which the Government must prove beyond a reasonable doubt. If the Government proves certain of such elements beyond a reasonable doubt, but fails to prove one of such material elements, beyond a reasonable doubt, the Government's case as to that count fails, and the defendants must be acquitted of that count.

20. One material element of the charge in each count which the Government must prove beyond a reasonable doubt, is that it must be established that the employee was actually employed in the construction of a public work, financed in whole or in part by loans or grants from the United States. In this connection, you may consider the testimony of the witness Elverson, who was employed by the Port Authority, who, you may find, testified that he was unable to state that any loans or grants from the United States actually financed the work which the Cape Ann Granite Company performed under their contracts with George M. Brewster & Sons, Inc., the general contractor.

21. Another material element of the charge which the Government is required to prove beyond a reasonable doubt, is that it must be established that the employee gave up a part of the compensation which he was entitled to under his contract of employment. In this connection, you may consider the testimony of the witness Tomasello, who you may find, testified that
326a as part of his contract of employment, agreed to accept as his compensation, $1.25 per hour, and agreed to return 25 cents an hour, providing he received $1.50 for every hour he worked. You may find that the 25 cents an hour which he claims to have given up, was not compensation to which he was entitled under his contract of employment. If you so find, the defendants must be acquitted of the charges laid in indictment 9–C.

22. Another element of the charge laid against these defendants which the Government is required to prove beyond a reasonable doubt, is that it must be established that the defendants applied force, intimidation, threat of procuring dismissal from the employment, or actually indulged in some other form of similar activity to induce the employee to give up a part of his compensation to which he was entitled under his contract. Even if you should find that the employees gave up a part of the compensation to which they were entitled under their contract of employment, that finding alone would not warrant your convicting the defendants. Before you could return such a verdict you would also have to find beyond a reasonable doubt that the employees were induced to

give up a part of their said compensation due to force, intimidation, threat of procuring dismissal from employment, or some other similar type of conduct actually exercised, applied or indulged in by the defendants, or some one acting in their behalf, and if you are unable to so find, the defendants must be acquitted.

23. Before there can be a conviction in this case, the Government is required to prove beyond a reasonable doubt, that the defendants, or some one in their behalf, actually applied either force, intimidation, threat of procuring dismissal from the employment, or actually indulged in some other similar activity or conduct, to induce the employee to give up a part of the compensation

327a to which he was entitled under his contract of employment.

If you are unable to find that force, intimidation, threat of procuring dismissal or some other similar activity was indulged in by the defendants, they must be acquitted.

24. Even if you should find that an employee gave up a part of the compensation to which he was entitled under his contract of employment, and did so because he believed it was expedient, for his best interests to do so, this finding would not be sufficient upon which to base a verdict of conviction, unless you were able to further find beyond a reasonable doubt, that his act in thus giving up his compensation, was induced by force, intimidation, threat of procuring dismissal from his employment, or some other similar activity actually put in motion by the defendants.

25. Before there can be conviction in this case, the Government is required to prove beyond a reasonable doubt, that the defendants intentionally applied force, intimidation, threat of procuring dismissal from the employment, or some other similar unlawful activity upon the employees, with the design that they give up a part of the compensation to which such employee was entitled under his contract of employment, and, if you are unable to so find, the defendants must be acquitted.

26. The mere act of accepting, receiving or collecting a part of the compensation, to which an employee is entitled under his contract of employment, is not a crime, under the statute, upon which the indictments are based.

26 (a). If an employee voluntarily surrenders or gives up a part of the compensation to which he is entitled under his contract of employment, the person receiving or collecting same is not guilty of a crime, under the statute, upon which the indictments are based.

328a 27. The motive or reason that actuated an employee in giving up a part of his compensation, is not material unless it is proven beyond a reasonable doubt that such motive or reason resulted from the application by the defendants, of intentional

force, intimidation, threat of procuring dismissal from employment, or some other similarly activity.

28. Even if you should find that the employee thought it was wiser, expedient, or necessary for him to give up a part of his compensation, if the workman's state of mind and act in thus giving up was not due to force, intimidation, threat of procuring dismissal from employment, or some other similar activity actually applied and indulged in by the defendants, there must be an acquittal.

29. Force, as used in the statute, implies the exertion of some physical power upon a person.

30. The word "intimidation" as used in the statute, means the making of a person fearful, inspiring, or effecting him with fear, by some display, act, or words indicating a willingness to inflict harm or injury. Intimidation may be by threats, by words, or an act calculated and compelling a person to do or not to do something.

31. The word "threat" means an offer by act or words, to intentionally hurt or injure one in his person or property.

32. The words "or by any other manner whatsoever" as used in the statute, do not mean that a crime is committed within the meaning of the statute, if an employee gives up a part of his compensation to which he is entitled under his contract of employment voluntarily, or without force, intimidation, or threat of procuring dismissal from the employment, but to the contrary, those
329a words or that phrase really means and only embraces other acts, conduct or activity similar to force, intimidation, threat of procuring dismissal from the employment.

33. You may find that several of the witnesses called by the Government testified that neither Rossi nor Laudani spoke to them with reference to the giving up of their wages; but tha they had a conversation with their friends, other workmen employed on the project, which conversation was had out of the presence of either Rossi or Laudani. You may also find that there was no evidence of any force, intimidation or threat of procuring dismissal from employment, or any other similar activity or conduct displayed, offer, or engaged in during such conversations. There is, of course, nothing before you as to what was said by such friends to said workmen during said conversations. You may consider these circumstances when you deliberate as to whether or not the Government has established, beyond a reasonable doubt, its charge that the defendants, by the application of force, intimidation, threats of procuring dismissal from the employment, or by some other act, conduct or activity similar thereto, induced the employees to give up a part of their compensation to which they were entitled under their contract of employment.

34. You may find that there is testimony by witnesses, called on behalf of the Government, that certain of the employees of the Cape Ann Granite Company allegedly gave up a part of their compensation after they had conversations with coworkers on the project (not with either Rossi or Laudani), and that such conversations took place out of the presence of either Rossi or Laudani. No person can be held responsible for the action and conduct of another, unless he directed, counseled or procured such act. If you are unable to find beyond a reasonable doubt, that the de-
330a fendant who is charged in the indictment with such act, did in fact, authorize, direct, or procure it to be done, the defendant thus charged must be acquitted.

35. In determining what weight you will give to the testimony of any witness, you have a right to consider whether the witness has an evil or bad motive in giving his testimony. If you find that a witness testifies because of an evil motive, or because of a desire for revenge or vengeance, against the defendants, you have a right to attach little or no weight whatever to that witness' testimony.

36. The motive, interest or bias that a witness has in testifying, is always a proper inquiry that a jury may make and consider with respect to such witness, in determining what weight, if any, the jury will attach to that witness' testimony.

37. Unless you can find beyond a reasonable doubt that the moneys which the employees claimed they paid to Rossi or Laudani were actually received by them for or on behalf of the Cape Ann Granite Company, the employer, you must acquit these defendants.

38. There is no evidence in this case that the defendants Rossi or Laudani were aiding and abetting, counselling or procuring or acting in behalf of the Cape Ann Granite Company with respect to the alleged giving up of compensation by the employees of the Cape Ann Granite Company, and I therefore direct you to acquit these defendants.

331a In the United States District Court for the District of New Jersey

Certificate of Stenographer

I, Morris Waxman, the stenographer designated in the foregoing entitled cause, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me before Hon. George A. Welsh, and a jury, on Thursday, March 5, *et seq.*, 1942.

MORRIS WAXMAN,
Certified Shorthand Reporter.

Dated: April 25, 1942.

In United States District Court, District of New Jersey

On Indictments 7-C, 8-C, 9-C, 10-C, 11-C—Certificate

UNITED STATES OF AMERICA

vs.

FRANK LAUDANI and ALFREDO ROSSI, *Defendants.*

Certificate of Judge

The foregoing bill of exceptions contains all of the evidence, given or offered on the trial of the above entitled causes and correctly shows the proceedings had on said trial; and said bill of exceptions is correct in all respects, and is hereby approved, allowed and settled, and made a part of the record herein as appears by the stenographer's certificate from which my information is obtained.

GUY L. FAKE,
United States District Court Judge.

Dated: June 10th, 1942.

332a In United States District Court

Notice of Appeal

Name and address of appellant: Frank Laudani, 893 Willoughby Avenue, Brooklyn, New York.

Name and address of appellant's attorney: Harold Simandl, 24 Branford Place, Newark, New Jersey.

Offenses: Appellant was charged with others, in five separate indictments, each containing numerous counts, with certain violations of the so-called "Kick-Back Act," Title 40 U. S. C. A., section 276-b. The indictments are numbered 7-C, 8-C, 9-C, 10-C, and 11-C, November 1939 Term of the United States District Court for the District of New Jersey. Indictment 7-C contains seven counts, but only counts two and three were submitted to the jury. Indictment 8-C contains four counts, but only count one of this indictment was submitted to the jury. Indictment 9-C contains ten counts, but only counts seven, eight, nine, and ten were submitted to the jury. The Government consented to a dismissal of indictment 10-C. Indictment 11-C contains five counts, but only counts one and two were submitted to the jury.

Each of the respective counts in each indictment purport to charge that the appellant did, on a specified date, induce certain named workmen, employed in the construction of a certain public work known as Weehawken Plaza connection of the Lincoln

Tunnel under the Hudson River, financed in part by loans and grants from the United States, to give up a specified part of the compensation to which the workman was entitled under
333a his contract of employment, by intimidation, threat of procuring dismissal from the employment, and by giving to understand that all persons employed on such work would be required to give to appellant, parts of their true wages so long as they were so employed.

Date of Judgment: Judgment was entered on March 27, 1942.

Description of Judgment or Sentence: Appellant was sentenced to nine months imprisonment on each of counts two and three of indictment 7–C, the sentences to run concurrently. He was sentenced to nine months imprisonment on count one of indictment 8–C, to run concurrently with the sentence imposed under indictment 7–C. He was sentenced to nine months imprisonment on each of counts seven, eight, nine, and ten of indictment 9–C, to run concurrently, and to also run concurrently with the sentence imposed under indictment 7–C. He was sentenced to nine months imprisonment on each of counts one and two of indictment 11–C, to run concurrently, and also to run concurrently with the sentence imposed under indictment 7–C, making his sentence nine months imprisonment in all.

Name of Prison where Appellant is now confined: Appellant is now confined in the custody of the United States Marshal for the District of New Jersey, at the New Post Office Building, Newark, New Jersey.

I, Frank Laudani, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Third Circuit, from the judgment above mentioned, on the grounds set forth below.

FRANK LAUDANI:

Dated: March 30, 1942.

334a *Grounds of Appeal*

1. The Trial Court erred in denying appellant's motion to quash the indictments and the respective counts thereof.

2. The Trial Court erred in overruling appellant's demurrer to the indictments and the respective counts thereof.

3. The Trial Court erred in denying appellant's motion to quash the indictments and the respective counts thereof, made at the close of the Government's case.

4. The Trial Court erred in denying appellant's motion to quash and dismiss the indictments and the respective counts thereof, made at the close of the entire case.

5. The Trial Court erred in overruling appellant's motion in arrest of judgment.

6. The Trial Court erred in denying appellant's motion to direct a verdict of acquittal, made at the close of the Government's case.

7. The Trial Court erred in denying appellant's motion to direct a verdict of acquittal, made after both sides had rested.

8. The Trial Court erred in excluding, over objection of appellant's counsel, competent, legal evidence, material and relevant to the issue.

9. The Trial Court erred in admitting, over objection of appellant's counsel, evidence which was illegal and prejudicial to appellant.

10. The Trial Court erred in denying the several motions of counsel for a mistrial, because of the illegal and prejudicial remarks of the Trial Court.

11. The Trial Court erred in its instructions to the jury.

12. The Trial Court erred in refusing to charge certain correct statements of the law applicable to the case, as
335a were duly and appropriately requested in writing by the appellant.

13. The Trial Court erred in its instructions, wherein it modified and explained certain correct statements of the law applicable to this case, which the appellant had requested the Court to charge, and which the appellant was entitled to have charged without such erroneous explanation and modification.

14. The Trial Court erred in pronouncing judgment against the appellants.

15. The judgment is contrary to the evidence.

16. The judgment is contrary to the weight of the evidence.

17. The verdict was contrary to the charge of the Court.

18. The judgment contravenes the Tenth Amendment of the Constitution of the United States.

19. The judgment contravenes the Fifth Amendment of the Constitution of the United States.

20. The judgment contravenes the Eighth Amendment of the Constitution of the United States.

HAROLD SIMANDL.
Attorney for Appellant.

Service of a true copy of the within Notice and Grounds of Appeal is herewith acknowledged this 30th day of March, 1942.

CHARLES M. PHILLIPS,
United States District Attorney
for the District of New Jersey.
By VINCENT E. HULL, *Asst.*

336a In United States District Court

Assignments of Error

And now come Frank Laudani, defendant-appellant, and says that in the record, proceedings and judgment aforesaid, there is manifest error, and for assignment thereof, says that:

1. The Trial Court erred in denying appellant's motion to quash the indictments and the respective counts thereof.

2. The Trial Court erred in overruling appellant's demurrer to the indictments, and the respective counts thereof.

3. The Trial Court erred in denying appellant's motion to quash and dismiss the indictments, and the respective counts thereof, made at the close of the Government's case.

4. The Trial Court erred in denying appellant's motion to quash and dismiss the indictment and the respective counts thereof, made at the close of the entire case.

5. The Trial Court erred in overruling appellant's motion in arrest of judgment.

6. The Trial Court erred in denying appellant's motion to direct a verdict of acquittal made at the close of the Government's case.

7. The Trial Court erred in denying appellant's motion to direct a verdict of acquittal, made after both sides had rested.

8. The Trial Court erred in admitting into evidence, over objection of appellant, Exhibit G–5.

9. The Trial Court erred in admitting into evidence, over objection of appellant, Exhibit G–6.

10. The Trial Court erred in admitting into evidence, over objection of Appellant, Exhibit G–7.

337a 11. The Trial Court erred in admitting into evidence, over objection of appellant, Exhibit G–8.

12. The Trial Court erred in admitting into evidence, over objection of appellant, Exhibit G–9.

13. The Trial Court erred in refusing to strike the answer of the Government witness Sante Spatola, on his direct examination:

"I don't know what was the reason for it, but I was paying to keep my job" (C., p. 142).

14. The Trial Court erred in permitting the Government witness Sante Spatola, to be asked and answer, on his direct examination, the following question:

"Mr. Spatola, did you pay the 25 cents per hour when you were earning $1.50 per hour, from December up to June; and did you pay 35 cents an hour when you were earning $1.88 from June to the time that you severed your connections, each and every week?" (C., p. 143).

15. The Trial Court erred in permitting the Government witness Sante Spatola, to be asked and answer, on his direct examination, the following question:

"By whose authority did you reduce the payment, the last month that you were connected with this concern, from 35 cents to 30 cents?" (C., p. 152).

16. The Trial Court erred in denying the motion of appellant to compel the Government to state the specific dates it intended to rely upon in indictment 11-C, in so far as said indictment had relation to the acts of the appellant with respect to the Government witness Joseph Faillace (C., p. 213).

338a 17. The Trial Court erred in refusing to strike the testimony of the Government witness, Gaetano DeCesare, on his direct examination:

"Now, what did Alfredo Rossi say to you, and what did you say to him?

A. He came to me and said a guy says, you know, we got to give so much back. I says, "Somebody else do, I do the same" (C., pp. 233, 234).

18. The Trial Court erred in permitting the Government witness, Gaetano DeCesare, on his direct examination, to be asked and answer:

"Who did you receive money from while you were on the job, the names?

A. Trolicchio" (C., p. 236).

19. The Trial Court erred in permitting the Government witness, Gaetano DeCesare, to testify, over the objection of appellant, that he had collected moneys from certain co-workmen, Lasora and Lamastra, over a period from April 1937 to March 1938, and had given such money to the defendant Rossi.

20. The Trial Court erred in permitting Government witness, Gaetano DeCesare, to be asked and answer the following question:

"What did Rossi tell you about these collections? What instructions did you get?

A. He says, 'Somebody pay back and you got to do the same.'

Q. What was that?

A. He says to me, 'You see, everybody do the same, and you got to do the same' " (C., p. 256).

339a 21. The Trial Court erred in refusing to strike out the testimony of the Government witness Gaetano DeCesare:

"He says to me, he says, "Everybody do the same; you got to do the same, that's all' " (C., p. 256).

22. The Trial Court erred in permitting into evidence, testimony of alleged criminal acts of the appellant, similar to those of which the appellant was charged in the indictment, committed

on other days and at other times than the dates specified in the indictment, without requiring the Government to first establish the offenses charged against appellant in the indictment.

23. The Trial Court erred in permitting each of the employees named in the several counts of the respective indictments, to testify that they paid back part of their wages during the entire term of their employment, although the Government failed to first establish the specific offenses charged in the indictments.

24. The Trial Court erred in refusing to compel the Government to inform appellant as to the specific date it charged he committed the offenses in the different counts of the indictments.

25. The Trial Court erred in permitting the Government to prove that each of the employees named in the several counts of the respective indictments, paid back parts of their wages during the entire term of their employment with the Cape Ann Granite Company, and in refusing to require the Government to designate the particular date, act, or transaction in each instance of the many thus introduced, it relied upon to establish each of the specific offenses charged in the various counts of the indictments.

340 26. The Trial Court erred in permitting the Government witness, Sarrapede, to be asked on his direct examination, the number of hours that Spatola, Faillace, Campo, Lasorsa, Tomasello worked for the Cape Ann Granite Company.

27. The Trial Court erred in refusing to permit the witness Alfredo Rossi, called on behalf of the appellant, to be asked and answer the following question:

"What did he say to you?" (C., p. 414).

28. The Trial Court erred in making the following highly prejudicial and improper remarks to the jury:

"I will repeat it. For me to permit evidence of this kind with reference to threats by Mazzola has no place in this case; and as to a labor candidate for office to be thrown in this case would be a red herring across its tail, and it would be taking them from the main subject of their inquiry into something that they haven't anything to do with" (C., p. 417).

29. The Trial Court erred in refusing appellant's motion for a mistrial, made after the Trial Court had delivered the following improper and prejudicial remarks to the jury:

"I will repeat it. For me to permit evidence of this kind with reference to threats by Mazzola has no place in this case; and as to a labor candidate for office to be thrown in this case would be a red herring across its tail, and it would be taking them from the main subject of their inquiry into something that they haven't anything to do with" (C., p. 417).

341a 30. The Trial Court erred in refusing to permit the appellant to establish, by competent proof, the following:

"That is what I have tried to establish, if the Court please. I am trying to do it step by step. I want to make my offer to the Court. I intend to prove by the testimony of Mr. Rossi that Mr. Mazzola personally threatened Mr. Rossi and then said that he would fix Mr. Laudani as well as Mr. Rossi, within the space of less than a week or two that Mr. Sarrapede approached this man. * * *"

Mr. Sarrapede approached this man, the Government agent who testified, and said that he had been sent to Mr. Rossi by Mr. Mazzola. We will show, by proof, that thereafter Mr. Mazzola, throughout the subsequent investigation, passed a resolution at each meeting; and we will show that there was but one single purpose which he had in mind and that was to break Frank Laudani.

Now, we want to show that that motive inspired by Mazzola, that these men in the spirit of revenge have come here to testify as they have, untruthfully against these men; and we submit that we have a right under the law to offer that evidence, and that it is offered in good faith; in sincerity, and is no red herring as your Honor has depicted it" (C., pp. 418, 419).

31. The Trial Court erred in refusing to permit the appellant, on his direct examination, to be asked and answer the following question:

"After the election will you tell me what, if anything, Mr. Mazzola said to you with respect to what he intended to do toward you?" (C., p. 453).

342a 32. The Trial Court erred in refusing to permit the appellant, on his direct examination, to be asked and answer the following question:

"Now, did he say anything at the same time to Rossi?" (C., p. 454).

33. The Trial Court erred in refusing to permit the appellant, on his direct examination, to be asked and answer the following question:

"Now, thereafter was there transmitted to you that he and his adherents intended to get even, if I may use that phraseology, or get revenge against you?" (C., p. 455).

34. The Trial Court erred in permitting the Government witness, Joseph Faillace, called on rebuttal, to be asked and answer the following question:

"Were you forced to make a statement to Mr. Sarrapede?

A. No, sir." (C., p. 482).

35. The Trial Court erred in permitting the Government witness, Sarrapede, called on rebuttal, to be asked and answer the following question:

"Mr. Sarrapede, there has been some testimony to the effect that you, in the conduct of your investigation, have taken a witness from Westchester County, or on the way to New York City, that you forced him into an automobile which you were operating, and then you had that person sign a statement, is that correct?

A. No, sir." (C., p. 474).

343a 36. The Trial Court erred in permitting the Government witness, Sarrapede, called on rebuttal, to be asked and answer the following question:

"Now, Mr. Sarrapede, there is testimony to the effect that in connection with the statement obtained from one, Felice Giovene, that Mr. Giovene was forced to sign a statement in connection with this particular case" (C., p. 485).

37. The Trial Court erred in permitting the Government witness, Sarrapede, called on rebuttal, to be asked and answer the following question:

"Do you remember in connection with your investigation, as far as Mr. Giovene is concerned, where the statement was signed? Was it signed at his house?

A. No; it was not signed at his house" (C., p. 486).

38. The Trial Court erred in permitting the Government witness, Sarrapede, called on rebuttal, to be asked and answer the following question:

"Was his wife present when it was signed? A. I never met his wife. Never saw his wife, and she was not present" (C., p. 486).

39. The Trial Court erred in permitting the Government witness, Sarrapede, called on rebuttal, to be asked and answer the following question:

"Were any of his children present? A. I didn't know he had any" (C., p. 486).

40. The Trial Court erred in permitting the Government witness, Sarrapede, called on rebuttal, to be asked and answer the following question:

344a "And was the statement made in the presence of Mr. Fitzgerald?

A. Yes" (C., p. 486).

41. The Trial Court erred in refusing to compel the Government to state what single count of several, in each of the indictments involving the same employee, the Government relied upon to establish the guilt of the appellant.

42. The Trial Court erred in permitting the District Attorney to make certain highly prejudicial and inflammatory remarks to the jury in his summation.

43. The Trial Court erroneously charged the jury as follows:

"Sometimes state and municipality participated jointly with the Federal Government; but the Federal Government, when it was appropriating this money for structures of the kind that we are discussing, in order to be sure that its money would go properly into the hands of the persons performing the duties for which they were paid, they wanted to make sure that no persons, or no person, or no corporation would require a person working on public works, in whole or in part, to return any part of the employee's wages, in order that he might keep his job or obtain his job" (C., p. 523).

44. The Trial Court erroneously charged the jury as follows:

"It is defined to be such a doubt as arising from the evidence—mind you, arising from the evidence—which causes or would cause an ordinary man or woman to hesitate in coming to a conclusion in the ordinary affairs of life. You will remember it says it must arise from the evidence. You can't conjure up the doubt
345a in your own mind just to get rid of a responsibility. The doubt must come from the testimony or lack of testimony, because the failure to prove all evidence can create a doubt, a reasonable doubt, of course, either by the absence of proper testimony or testimony of a positive nature proving innocence. The testimony must come from the witness stand. That is what is known as reasonable doubt" (C., p. 528).

45. The Trial Court erroneously charged the jury as follows:

"In this instance they have both presented what is known as character testimony. That has been brought in by the defendants, and it is you duty to look at the witnesses who testified and see whether or not they had opportunity for knowing these men's reputations and whether they were telling the truth, based upon your opportunity to observe; and if you believe that they were able to testify as to their good character and good reputation, and testify truthfully, you take that in as established evidence as coming from the defendants, and put it in the scale upon which you put the evidence that is in his favor and give it the same weight as any other evidence that he would produce on his side of the case" (C., p. 530).

46. The Trial Court erroneously charged the jury as follows:

"Now, here I am, sitting as a trial judge in a case where the men who laid that work, and the contractors who got the contracts, and the foreman who superintended that job are involved in a violation of our laws" (C., p. 532).

346a 47. The Trial Court erroneously charged the jury as follows:

"Whatever was done in the way of these alleged violations for some time, was kept quiet for the parties" (C., p. 534).

48. The Trial Court erroneously charged the jury as follows: "These men were all members of the union representing their craft, the American Federation of Labor. Mr. Laudani was their president; or occupied a high position in one of the unions, No. 78, I think it was" (C., p. 534).

49. The Trial Court erroneously charged the jury as follows: "Would these men go to their union and complain about their foreman, the foreman being Mr. Laudani, and also holding a high position in the union? You have a right to ask that, members of the jury, as to what motivated these men as to why they did or did not do something" (C., p. 534).

50. The Trial Court erroneously charged the jury as follows: "You have a right to ask yourselves 'How active were these men in this union?' Some of these men said that they only went down to the union to pay their dues. Some men didn't know Mr. Mazzola. Some knew who he was. Some didn't know Mr. Laudani very well. You have that picture before you" (C., pp. 535, 536).

51. The Trial Court erroneously charged the jury as follows:

347a "Now, it has been brought before you in evidence that Mr. Rossi and Mr. Laudani are not the only defendants here. There are a number of others; but we are only trying these two. Now, ask yourselves what reason would there be for the making of this general charge against others? Was that still attributed to the outcropping of this election contest, or was it not?" (C., p. 536).

52. The Trial Court erroneously charged the jury as follows: "Mr. Mazzola, as I say, has not appeared; and while in the presentation of the case before you, when counsel made a motion to strike out such testimony, the Court stated, in your hearing, that we were not trying a labor union case and that to try it—a labor union case—would result in a red herring being dragged across the trail" (C., p. 536).

53. The Trial Court erroneously charged the jury as follows: "Now, members of the jury, I would not want you to get into your minds that the fact that there was an election contest is a red herring. That is not a red herring. That is something that you have a right to consider; but for us to go into the ramifications of a labor quarrel would be to cause us to follow a trail other than the one we are committed to follow up" (C., pp. 536, 537).

54. The Trial Court erroneously charged the jury as follows: "You have a right to ask yourselves another question inasmuch as it has been thrown into the jury box by the defendants.

348a They are laying considerable stress on the activities of Mr. Mazzola. You have a right to inquire—having seen these

witnesses now—whether Mr. Mazzola was active at all in the matter, and what form did his activities take? Did his activities take some form of obtaining witnesses to perjure themselves against another man, a man who had been their foreman? Did the activities take the form, if he thought or knew something was wrong in connection with these kick-backs, of tipping the authorities off and then started these wheels in motion? What form did it take? As it was testified, he had two courses that he could have taken. He could have tipped the authorities off if he knew of any irregularity, or he could have taken the course of obtaining perjured witnesses and framing the men. It is for you to determine what course he took. You are to say what are the logical and fair conclusions to be drawn from the inferences" (C., pp. 537, 538).

55. The Trial Court erroneously charged the jury as follows:

"Now, the question of law, with reference to the right of the Federal Government to conduct this case has been raised by the defendants. Members of the jury, it is my duty to charge you that under the law if you believe the testimony in this case you can find these men guilty. The Court holds that the federal law has been violated if these facts are true. The federal law covers this type of a case. I won't amplify that any further, but to give you that just as a charge of the Court on the question of law" (C., p. 538).

349a 56. The Trial Court erroneously charged the jury as follows:

"I affirm that point, members of the jury, because the testimony in the case as to the financial contribution by the United States Government on this project is in evidence, and you will consider all of it; and if you find from the evidence that this was constructed in whole or in part by appropriations from the United States Government, you may convict these defendants" (C., p. 548).

57. The Trial Court erroneously charged the jury as follows:

"I affirm that point, members of the jury, because you may find anything, because you are absolutely in charge of the situation. I could not say that you could not find anything because if I did, I would be constituting myself the trier of the facts, and not you. I affirm that point with that statement" (C., p. 549).

58. The Trial Court erroneously charged the jury as follows:

"That is affirmed, members of the jury; because if the defendants had made no demands or had done nothing to produce a state of mind in the employees, why, of course, they could not be held guilty for anything, because they would have done nothing" (C., p. 552).

59. The Trial Court erroneously charged the jury as follows: "I affirm that point, members of the jury, but I say you have a right to ask yourselves this: Did the receiving of money
350a later by the defendants, after that conversation was alleged to have taken place, throw any light as to what that conversation was? In other words, you have to take the words and actions of all the parties concerned, balance them and weigh them, and find out what interpretation should properly be placed upon the acts. The prosecuting witnesses say they paid these various sums of money. As this point for charge indicates, some of the conversations having to do with the matter took place out of their presence, and between other people. Now then, you have a right to say whether there is any connection between those conversations, the connection coming from the evidence and the receipt, as alleged, of these moneys. That is all one. The whole question is for you. I affirm this point, but I direct your attention to your right to consider the matter from the angle that I have just indicated" (C., pp. 555, 556).

60. The Trial Court erred in refusing to charge the 20th request of the appellant, without explanation or modification.

61. The Trial court erred in refusing to charge the 21st request of the appellant, without explanation or modification.

62. The Trial Court erred in refusing to charge the 28th request of the appellant, without explanation or modification.

63. The Trial Court erred in refusing to charge the 34th request of the appellant without explanation or modification.

64. The Trial Court erred in refusing to charge appellant's request No. 26 (C., p. 590).

351a 65. The Trial Court erred in refusing to charge appellant's request No. 26(a) (C., p. 591).

66. The Trial Court erred in refusing to charge appellant's request No. 29 (C., p. 591).

67. The Trial Court erred in refusing to charge appellant's request No. 37 (C., p. 595).

68. The Trial Court erred in refusing to charge appellant's request No. 38 (C., p. 595).

69. The Trial Court erred in submitting the case to the jury when there was insufficient evidence in law and in fact upon which the jury could predicate a finding of guilt.

70. The conviction of the appellant is illegal because all of the evidence in the case was as consistent with innocence of said appellant, as with his guilt.

71. The Trial Court erred in imposing sentence upon the appellant because the judgment is contrary to law.

72. The verdict of the jury was contrary to the legal and competent evidence adduced at the trial.

WHEREFORE, appellant FRANK LAUDANI, prays that the judgment herein for the errors aforesaid in the record and proceedings herein may be reversed and annulled, and altogether held for nothing, and that he may be restored to all things which he lost by reason of said judgment.

HAROLD SIMANDL,
Attorney for Defendnt-Appellant.

Service of a true copy of the within Assignments of Error is herewith acknowledged this 15 day of June 1942.

CHAS. A. STANZIALE,
United States Attorney.

352a *Exhibit G-12*

AFFIDAVIT

STATE OF NEW YORK,
County of New York, ss:

I, Frank Laudani, make this statement for Stephen S. Sarrapede and Maurice A. Fitzgerald, Special Agents, Division of Investigations, Federal Emergency Administration of Public Works of my own free will knowing that it may be used against me. No threats or promises of reward or immunity have been made to me.

I reside at 893 Willoughby Avenue, Brooklyn, New York. I am 40 years old, married and a native-born citizen.

I am a stonemason by trade and have followed that trade intermittently for about 15 years. I am President and Business Agent of the Bricklayers, Masons, and Plasterers International Union of America, Local No. 47, with headquarters at 96 Wilson Avenue, Brooklyn, New York. I was elected for both these offices in December 1938 for a one-year term, extending to December 1939. I was also President of the said Local in the year 1937, when I finished the unexpired term of another President.

I was employed by the Cape Ann Granite Company in the early part of November 1936 in the capacity of foreman. Work was not started on the Lincoln Tunnel project, Contract No. 9, until about the middle of December 1936. Prior to that time I visited the job occasionally. I visited the job alone and with Mr. Carney, estimator for the Cape Ann Granite Company. These visits were purely in the nature of preparing for the work ahead.

During the period of preparation my salary was paid by the Cape Ann Granite Company at the rate of $50 per week. Towards the middle of December when operations started on the
353a project I was taking my orders from the Cape Ann Granite Company, but was receiving my weekly pay from George

M. Brewster & Son of Bogota, New Jersey, general contractor on Contract No. 9, Midtown Hudson Tunnel project. The Cape Ann Granite Company, through one of its officers, told me that I would receive my pay from the Brewster Company due to the fact that the Cape Ann Granite Company, as subcontractor, had not yet been approved by the Public Works Administration and, therefore, could not appear as subcontractor on the job or pay wages to me. I do know that from the middle of December, 1936, I was running the job as foreman for the Cape Ann Granite Company who were in full charge of stone cutting and setting operations.

To the best of my recollection I had about three or four stonemasons working under me during the month of December 1936. Operations were not in full swing until the Cape Ann Granite Company was approved as a subcontractor. Up to the time of said approval I received my weekly salary from George M. Brewster & Son, general contractor, as did the other stonemasons working under me.

I was employed as foreman on both subcontracts of the Cape Ann Granite Company, namely on Contract MHT-5B and Contract MHT-9. As foreman I was in entire charge of the work under the subcontracts. I hired all stonemasons and helpers and workmen under other classifications, and discharged workmen when necessary. My decision in hiring and firing was not subjected to revocation by anyone else on the job.

It has been called to my attention that certain workmen who were employed by me as foremen for the Cape Ann Granite Company during the time that operations were conducted on the Midtown Hudson Tunnel have made statements under oath that they paid me various sums of money out of their weekly wages as a kick-back, or that they paid other workmen employed on
354a the job kick-back money which was allegedly turned over to me. I wish to emphatically deny that I ever received or collected from any of the workmen of the Cape Ann Granite Company on the Lincoln Tunnel Project during 1936, 1937 or 1938 any amount or sums of money as a kick-back or otherwise. I likewise categorically deny the statements of the workmen who maintain that they made kick-back collections for me on this job. In addition I wish to affirm that I never even approached any of the workmen and suggested to them that they make kick-backs to me out of their weekly wages. I am certain that no kick-backs were ever paid by any of the workmen of the Cape Ann Granite Company on the Lincoln Tunnel job to me or to the Company or to anyone else connected with the project. However, I do recall that on a few occasions I have made loans to various workmen, whose names I do not now recall, when they requested

said loans, and that they subsequently returned the money which they had borrowed. I cannot state with any degree of certainty the total amount of money that I loaned to the various workmen during the period of the job. I do not believe that during the entire period of work that I loaned more than $500 in all. Payments on these loans were made directly to me and through no intermediary.

I am acquainted with a stonemason by the name of Matteo Viaggio, who was employed by the Cape Ann Granite Company on the above-mentioned project. Viaggio worked with me at the time we were being paid by George M. Brewster & Son, general contractor, and I know that he made a trip to Italy in the early part of 1937. I know that when he returned from Italy either in April or May 1937 he was again employed by the Cape Ann Granite Company on the same project. I hired him at the time he returned from Europe. I deny that Matteo Viaggio was ever carried on the pay rolls during the time that he was away in Europe or during any other period, when he was not ac-
355a tually employed by the Cape Ann Granite Company, or that I ever pocketed at any time any salary prepared for Mr. Viaggio.

I wish further to deny that I ever sold any truck loads of cement belonging to the Cape Ann Granite Company, or any other company or that I appropriated any tarpaulins of said company.

I am familiar with Section 35 of the United States Criminal Code which provides a penalty of not more than $10,000 or imprisonment of not more than ten years or both for knowingly and wilfully making or causing to be made "Any false and fraudulent statements * * * or use, or cause to be made or used, any false account, claim, certificate, affidavit, or deposition knowing the same to contain any fraudulent or fictitious statement relating to any matter within the jurisdiction of any Governmental Department or Agency."

I have read the above statement and same is correct and true in each and every respect.

(Signed) FRANK LAUDANI.
Frank Laudani.

Subscribed and sworn to before us this 7th day of February 1939.

(Signed) STEPHEN S. SARRAPEDE.
Stephen S. Sarrapede.
Special Agent, P.W.A.

(Signed) MAURICE A. FITZGERALD.
Maurice A. Fitzgerald.
Special Agent, P.W.A.

356a *Exhibit G–13*

AFFIDAVIT

STATE OF NEW YORK,
County of New York, ss:

I, Alfredo Rossi, make this statement for Stephen S. Sarrapede and Maurice A. Fitzgerald, Special Agents, Division of Investigation, Federal Emergency Administration of Public Works, of my own free will knowing that it may be used against me. No threats or promises of reward or immunity have been made to me.

I reside at 353 East 116th Street, New York, New York.

I have been a stonecutter for the past 35 or 40 years. I have been a member of Local No. 47 of the Bricklayers', Masons', and Plasterers' International Union of America since July 1937.

I was formerly employed by the Cape Ann Granite Company on the construction of the Lincoln Tunnel Project, docket 228 N. Y., from the early part of January 1937 to the end of February 1938. During this period I worked on the New Jersey side of the project as a stonecutter and for a few months as foreman of a gang of stonemasons. Previous to my work with the Cape Ann Granite Company, I had been working on another job with Frank Laudani. When he was made general foreman and superintendent of work for the Cape Ann Granite Company, he hired me as a stonecutter on the project.

It has been called to my attention that certain of the stonecutters and stonemasons, who were employed with me during all or part of the time that I worked on the Lincoln Tunnel Project for the Cape Ann Granite Company, have made statements under oath that they paid me various sums of money out of their weekly wages as kick-backs. I categorically deny that I ever re-
357a ceived or collected from any of the workmen of the Cape Ann Granite Company on the Lincoln Tunnel Project during 1937 and 1938 any amount or sums of money for kick-back or for any purpose whatsoever. I likewise deny that I, myself, ever paid any kick-back while so employed by the Cape Ann Granite Company. I also assert that I have no knowledge of any kick-back activity on that job and that I never turned over any sums of money collected from the Cape Ann Granite Company employees as kick-back to Frank Laudani, or to any other individual or company.

I am familiar with Section 35 of the U. S. Criminal Code, which provides a penalty of not more than $10,000, or imprisonment of not more than 10 years, or both, for knowingly and wilfully making or causing to be made "any false or fraudulent state-

ments * * * or use, or cause to be made or used any false account, claim, certification, affidavit, or deposition knowing the same to contain any fraudulent or fictitious statement relating to any matter within the jurisdiction of any Governmental Department or Agency."

I have read the above statement and same is correct and true in each and every respect.

(Signed) ALFREDO ROSSI.
Alfredo Rossi.

Subscribed and sworn to before us this 3rd day of February 1939.

(Signed) STEPHEN S. SARRAPEDE
Stephen S. Sarrapede,
Special Agent.

(Signed) MAURICE A. FITZGERALD
Maurice A. Fitzgerald,
Special Agent.

358a *Exhibit D-1*

STATE OF NEW YORK,
County of N. Y., ss:

Santo Spatola being sworn, deposes and says:

That he resides at No. 1145 Thierot Avenue, Bronx, New York.

That he was employed in 1937 by the Cape Ann Granite as a stonemason on the Weehawken entrance of the Lincoln Tunnel.

That he received wages on said job at the union sale.

That he was never forced by threats of dismissal or of bodily harm to make payments of part of his said salary to anyone.

That any payments that deponent may have made, were voluntarily and not under force or duress.

(Signed) SANTE SPATOLA.

Sworn to before me this 23rd day of February 1942.

_____
Notary Public.

N. Y. County No. 210. Term Expires 3/30/42.

359a *Report of Senate Committee*

Calendar No. 885

73D CONGRESS 2d Session	SENATE	REPORT No. 803

TO PREVENT EVASION OF CERTAIN STATUTES CONCERNING RATES OF PAY FOR LABOR

APRIL 17 (Calendar day, APRIL 23), 1934.—Ordered to be printed

Mr. STEPHENS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 3041]

The Committee on the Judiciary, having had under consideration the bill (S. 3041) to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes, reports the same favorably to the committee and recommends that the bill do pass, with the following amendments:

On page 2, line 2, immediately after the sign "$", insert the figures "5,000".

On page 2, line 2, immediately after the words "or imprisoned not more than," insert the word "five."

On page 2, line 5, immediately after the word "Treasury", insert the words "and the Secretary of the Interior jointly."

Hearings of the Senate Committee on Racketeering revealed that large sums of money have been extracted from the pockets of American labor, to enrich contractors, subcontractors, and their officials. In the language of one of the great leaders of labor:

It has been a common practice for contractors constructing Federal buildings to pay the employees the prevailing rate as determined by the Secretary of Labor and then have them return a certain amount to the contractor. That is a most vicious practice.

The purpose of the last amendment above set out is to make the legislation apply to P. W. A. grants.

73D CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT No. 1750

TO EFFECTUATE THE PURPOSE OF CERTAIN STATUTES CONCERNING RATES OF PAY FOR LABOR, BY MAKING IT UNLAWFUL TO PREVENT ANYONE FROM RECEIVING THE COMPENSATION CONTRACTED FOR THEREUNDER, AND FOR OTHER PURPOSES.

MAY 23, 1934—Referred to the House Calendar and ordered to be printed

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Mr. SUMNERS of Texas, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 3041]

The Committee on the Judiciary, to whom was referred the bill (S. 3041) to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent any one from receiving the compensation contracted for thereunder, and for other purposes, after consideration, report the same favorably to the House with the recommendation that the bill do pass.

This bill is aimed at the suppression of the so-called "kick-back" racket" by which a contractor on a Government project pays his laborers wages at the rate the Government requires him to pay them, but thereafter forces them to give back to him a part of the wages they have received. The maximum penalty prescribed for violation of the bill which prohibits this practice is a fine of $5,000 or imprisonment for 5 years, or both.

The Administrator of Public Works has urged the passage of this proposed legislation in the following letter to the Chairman of the Committee on the Judiciary:

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS,
Washington, May 8, 1934.

HON. H. W. SUMNERS,
Chairman of the Judiciary Committee,
House of Representatives, Washington, D. C.

MY DEAR JUDGE SUMNERS: It has come to my attention that bill S. 3041 has passed the Senate and is now under consideration by

your committee. This bill makes a misdemeanor the inducing, by any manner whatsoever, of a "kick-back" from wages received pursuant to a contract of employment on any project financed in whole or in part with Federal funds

I wish to impress you with the urgent need of this legislation to prevent a very prevalent evil in the construction industry which, to the extent that it exists on Public Works projects, defeats the purpose of title II of the National Industrial Recovery Act and the success of our Public Works program.

Sincerely yours,

HAROLD L. ICKES, *Administrator.*

361a *Decision of Comptroller General*

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

A-90983

DEC. 14, 1939.

The Honorable, THE SECRETARY OF THE TREASURY.

SIR: There has been considered your letter of November 13, 1939, as follows:

"Reference is made to decision of the Acting Comptroller General dated January 21, 1938 (17 Comp. Gen. 585) addressed to the Secretary of Commerce, paragraph four of which reads as follows:

"'Article 17 of the standard form of construction contract, which contains the requirements of the Bacon-Davis Act of August 30, 1935, 49 Stat. 1011, is not for application in the instant case for the reason that the place of performance could not be ascertained in advance of the bidding, and therefore, the work to be done falls within the exemption announced by the Department of Labor in Treasury Procurement Circular Letter No. 126, dated October 7, 1935—where the work involved covers the construction or repair of ships or other movables where the place of performance of the contract cannot be ascertained in advance of the bidding. Also, it would appear that Article 19 of said standard form of contract, containing requirements pursuant to the act

362a of June 13, 1934, 48 Stat. 948—"To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder * * *"—is not applicable to contracts of this character since there is not for inclusion therein any schedule of wage rates to be maintained, such as are

contemplated by the Bacon-Davis Act, supra, and by similar statutory provisions.'

"Your decision is respectfully requested as to whether the provisions of the Act of Congress approved June 13, 1934 (48 Stat. 948) and the regulations promulgated pursuant thereto are applicable to other contracts for construction or repair of public buildings and public works where the amount of the contract is less than $2,000.00 and there is not for inclusion any schedule of wage rates to be maintained such as are contemplated by the Act of August 30, 1935 (49 Stat. 1011)."

The act of Congress approved June 13, 1934, 48 Stat. 948, commonly known as the "Kick-Back" Act, provides as follows:

"That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

"SEC. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the In-363a terior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week."

In a decision of August 25, 1939, to the Secretary of Agriculture, A-96381, A-98125, with respect to the application of said act to contracts for the construction, prosecution of any public building, public work, or building or work financed in whole or in parts by loans or grants from the United States, or in the repair thereof, it was held as follows:

"While the preamble to the act states that it is—

"'To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes;'

the 'certain statutes' and 'other purposes' are not otherwise designated or described, and such language in the preamble may not be viewed as limiting the provisions in the enactment itself expressly extending its protection to 'any' person employed in the construction, etc., of 'any' public building, public work, etc., or in the repair thereof. That the act is not limited to contracts where there is a predetermination of wage rates pursuant to the

Bacon-Davis Act as amended by the Act of August 30, 1935, 49 Stat. 1011, seems clear from the fact that such amendment, which first required the stipulation of predetermined wage rates, was not enacted until more than a year after the Kick-Back Act became law. That such act was not intended to be limited to contracts coming within the scope of the original Bacon-Davis
364a Act of March 3, 1931, 46 Stat. 1494, and, therefore, is not to be viewed as limited to contracts under such act as subsequently amended, is clear from the fact that the original Bacon-Davis Act extended only to contracts in excess of $5,000 for the construction, etc., of 'public buildings', whereas the Kick-Back Act expressly extends to contracts for any 'public building' or 'public work.' The Kick-Back Act relates to the compensation of 'any person employed' to which 'he is entitled under his contract of employment' and not necessarily to wage rates which the employer has stipulated in the employer's contract with the Government. There is as much reason to protect employees under small contracts in such respects as under large contracts, and the joint regulations of the Secretary of the Treasury and the Secretary of the Interior, promulgated pursuant to section 2 of the Act, make no distinction in that regard. To the extent that such joint regulations are in consonance with the statute—and they are not established to be otherwise—they have the force and effect of law, and are required to be followed. See decision of January 19, 1939, 18 Comp. Gen. 616."

The interpretation of the Kick-Back Act by this office as stated in the above-quoted decision of August 25, 1939, is in agreement with the interpretation placed thereon by the courts. In the case of United States v. Golder, 11 F. Supp. 870, decided July 30, 1935, the court, with respect to this statute, stated—

"In the simplest language possible, the thing which the act makes a crime is employing a workman at a certain rate of pay and then compelling him to waive or return some part of his pay by threat
365a of dismissal, force, or intimidation. It is of the essence of the offense that the money which he thus is made to give up is money *to which he is entitled under his contract of employment*. That is the precise language of the act. 'Contract of employment' means the agreement between the contractor and the workman, not the contract between the contractor and the public body in charge of the work. If the workman receives the whole amount of the wages which the employer agreed to pay him when he went to work and is not compelled to give back or to waive any part of it, the act has not been violated. *It does not reach (and from the reports of the Committees of the House and Senate apparently was not intended to reach) cases where, at the time he was employed, the employee was induced by whatever*

means to accept a lower rate of pay than he might have insisted upon by reason of his skill, the kind of work, or his classification, or than that which the contractor had agreed with any board or public official to pay or which the government required him to pay." [Italics supplied.]

To the same effect is the conclusion reached in the case United States v. Charlick, 26 F. Supp. 203, decided January 6, 1939, wherein it is stated—

"The statute is a highly penal one and the defendants are entitled to a strict construction. The offense at which it is aimed is, compelling workmen to return to their employers wages to which the contract between the employer and his employees entitles them. *It was not intended to punish the refusal or failure of an employer to pay his men according to a general wage scale fixed by the Government, or to pay them the wages which he may have agreed* 366a *to pay in his contract with the Government or with the general contractor*—contracts to which the men were not parties. * * *" [Italics supplied.]

It is clear from the foregoing that the penalty provided in the statute under consideration relates to "kick-backs" with respect to contracts of employment between a contractor and his employees and not with respect to stipulations in a contract between a contractor and the United States that the contractor should pay the employees a certain wage. That being the case, the application of the said act to a particular Government contract is not dependent upon, or affected by, an agreement between the contractor and the United States that the employees shall be paid specified wages. In other words, it is of no consequence in the application and enforcement of the Kick-Back Act that the contract between the contractor and the United States does or does not specify the wages to be paid the contractor's employees, as required by the Bacon-Davis Act, 49 Stat. 1011, in certain cases.

In view of the above it appears the Kick-Back Act applies to all contracts for the repair, construction, prosecution, or completion of "any public building, public work, or building or work financed in whole or in part by loans or grants from the United States," irrespective of the amounts of such contracts and the fact that such contracts may not specify the wages to be paid by the contractors to their employees. The statement to the contrary in the decision published at 17 Comp. Gen. 585, referred to in your letter, was not necessary to the disposition of that case, was not determinative of the matter there involved, and hereafter should be disregarded.

Respectfully,

(Signed) R. N. ELLIOTT.
Acting Comptroller General of the United States.

367 In the United States Circuit Court of Appeals for the Third Circuit

No. 7997—October Term, 1942

UNITED STATES OF AMERICA

v.

FRANK LAUDANI, APPELLANT

Minute entry of hearing

And afterwards, to wit, the 5th day of October 1942, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable Albert B. Maris, and Honorable Charles Alvin Jones, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 16th day of March 1943, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

In the United States Circuit Court of Appeals for the Third Circuit

No. 7997—October Term, 1942

UNITED STATES OF AMERICA

v.

FRANK LAUDANI, APPELLANT

Appeal from the District Court of the United States for the District of New Jersey

Opinion

(Filed March 16, 1943)

Before BIGGS, MARIS, and JONES, Circuit Judges

JONES, Circuit Judge.

Laudani, the appellant, and one Rossi, along with several others, were charged in each of a number of counts in fourteen sep-
368 arate indictments with having induced, by means of intimidation, threats of dismissal, etc., certain named employees of a company doing work, financed in part by grants from the United

States, to give up to the defendants portions of the employees' weekly compensation in alleged violation of the Act of June 13, 1934, c. 482, Sec. 1, 48 Stat. 948, 40 U. S. C. A. § 276 b, commonly known as the "Kick-Back Act." The court, on the government's motion, severed as to all defendants except Laudani and Rossi on five of the indictments, which were thereupon tried together. Rossi was acquitted. Laudani was convicted on one or more of the counts in each of the indictments tried except one as to which the government consented to a dismissal. Laudani appeals from the ensuing judgment of sentence.

The appellant contends that the evidence was insufficient to convict on any of the counts in the indictments, but we deem it unnecessary to treat with that contention, for in our opinion the facts alleged and proven by the government do not lay a case within the purview of the statute cited. This question was raised timely by the appellant's demurrers and motions to quash before plea; by his motion for directed verdict of acquittal at the close of the government's case as well as at the close of the entire case; and by his motion in arrest of judgment after verdict. All of these motions were overruled or denied.

It is therefore unnecessary to recite in detail the evidence with respect to each of the specific counts whereon convictions were had. A statement of the basic facts common to all of the counts in all of the indictments will be sufficient for the consideration of the question which we deem crucial. (Incidentally, there was also at trial what we consider to be reversible error to which we shall make reference later because of its significance to trials in general.) Except for appropriate differences in names, dates, and sums of money, allegedly exacted from employees, all of the counts of the several indictments are couched in identical language and supply the following factual situation.

Between January 1, 1937, and May 15, 1938, there was under construction at Weehawken, New Jersey, certain public work known as the Weehawken Plaza under a general contract between the Port of New York Authority and George M. Brewster & Son, Inc., and a subcontract between the Brewster Company and the Cape Ann Granite Company for the furnishing and setting of granite rubble facing and coping necessary in the construction. The work was financed in part by grants from the United States. Laudani, the appellant, was foreman for the Cape Ann Granite Company and, as such, had authority to employ and discharge stone masons and other stone workers in connection with the
369 work. He knew that the rate of pay for such employees, as fixed and posted on the work, was a certain amount per hour over the period of time involved in the indictments and that all workers so employed were entitled to receive compensation at the

at the posted rate of pay without deduction for any purpose whatever. Notwithstanding, Laudani and one or more of his representatives, as the indictments allege, induced by threats of dismissal, etc., certain-named employees of the Cape Ann Granite Company to give to and for Laudani and one or more of his representatives parts of such employees' wages to which the latter were entitled for work and labor performed on the particular work.

Section 1 of the Act of June 13, 1934 (40 U. S. C. A. § 276 b), whereon the indictments are based, provides that—

"Whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

From a reading of the statute it seems plain that the evil aimed at is the inducing of an employee, engaged in work of the character specified, "to give up any part of the compensation to which he is entitled under his contract of employment." The "contract of employment" referred to of course means the contract between the employee and his employer. United States v. Golder et al., 11 F. Supp. 870, 871 (D. C. E. D. Pa.). Essential, therefore, to the crime as defined by the statute is the impairment, violation or derogation of the employee's contractual right with respect to the wages he is to receive. As the person capable of so offending, because of the requisite privity of contract, is the employer, the statute as written necessarily has application to a situation where the employee gives up or cedes a portion of his contractual wage to or in favor of or at the instance of the employer or one acting for or on behalf of the employer. In the Golder case, supra, Judge Kirkpatrick of the District Court for the Eastern District of Pennsylvania, said that "If the workman receives the whole amount of the wages which the employer agreed to pay him when he went to work and is not compelled to give back or to waive any part of it, the act has not been violated." Further specifying in United States v. Charlick, 26 F. Supp. 203, 205 (D. C. E. D. Pa.), the safe Judge stated, and we think correctly, that "The offense at which it (the "Kick-Back Act") is
370 aimed is compelling workmen to return *to their employers* wages to which the contract between the employer and his employees entitles them." [Italics supplied.] The views thus expressed in the Golder and Charlick cases, supra, as to the aim and scope of the statute were quoted with approval by the Comp-

troller General in a decision (A-90983) rendered the Secretary of the Treasury on December 14, 1939. See 19 Comp. Gen. 576, 577, 578.

The conclusion that the offense denounced by the statute consists of inducing an employee to give up a portion of his wages in derogation of his *contract of employment* (necessarily to the enrichment of the other party thereto) finds further confirmation in the expressed purpose of the statute. According to its title, it was designed "To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes." So long, therefore, as the employer pays his employees the wages to which they are entitled under their contracts of employment and the employees are not induced or required to give back any part of their compensation, it cannot be said that they have been prevented from receiving the compensation to which their contracts of employment entitle them. What happens to the compensation after the employee has received it in full, and wholly without relation to or effect upon his contract of employment, is a matter with which this statute does not purport to deal.

The legislative history of the Act leaves little doubt that it was intended to penalize contractors, who, enjoying federal work or work federally aided, unconscionably enrich themselves at the expense of their employees in denial of their contracts of employment. In reporting favorably the bill (S. 3041), which eventuated in the Act, the Senate Committee on the Judiciary stated that hearings had "* * * revealed that large sums of money have been extracted from the pockets of American labor, to enrich contractors, subcontractors, and their officials." The report also quoted from "one of the great leaders of labor" to the effect that "It has been a common practice for contractors constructing Federal buildings to pay the employees the prevailing rate as determined by the Secretary of Labor and then have them return a certain amount to the contractor. * * *" Senate Report No. 803, 73rd Cong., 2d Sess. In the House, whose Committee on the Judiciary also reported the bill (S. 3041) favorably, the Committee report stated that "This bill is aimed at the suppression of the so-called 'kick-back racket' by which a contractor on a Government project pays his laborers wages at the rate the Government requires him to pay them, but thereafter forces them
371 to give back to him a part of the wages they have received." House Report No. 1750, 73rd Cong., 2d Sess.

Nor is it entirely without significance that Sec. 2 (48 Stat. 948), which was expressly included in the Act as an aid in the enforcement of Sec. 1 (the penal provision), authorizes the Secretary

of the Treasury and the Secretary of the Interior jointly to make reasonable regulations "for contractors or subcontractors on any such building or work. * * *." Of course, no distinction is to be drawn, and we make none, between work for which the government directly lets a contract to which "the prevailing rate" of wage to the contractor's employees attaches by virtue of the Act of March 3, 1931, c. 411, § 1, 46 Stat. 1494, as amended, and federally aided work performed for other public agencies to which rates of pay to employees attach by virtue of competent federal departmental regulations. The "Kick-Back Act" is broad enough to embrace all work financed in whole or in part by federal funds. In fact, the bill (S. 3041) was purposely amended in such regard in Senate committee. See Senate Report, supra.

But nowhere in the Act, its title, or its legislative history is it suggested that it was intended thereby to reach an extortioner or blackmailer (not privy to the contract of employment) merely because the persons upon whom such an offender preys receive their compensation as employees of a contractor doing public work financed in whole or in part by federal aid. Nor would a court be justified in so extending the statute. Being penal, it is to be strictly construed and not extended by judicial construction beyond what the legislature has written. United States v. Resnick, 299 U. S. 207, 209. The sanctions of the "Kick Back Act" are directed at offending employers amenable to federal regulations. Equally reprehensible though it is for one not the employer to exact tribute from a workman upon threat of disturbing him in his employment, no greater need for federal protection of workers against the threats of extortioners or blackmailers in general is indicated simply because their employer happens to derive all or a part of his income from work dependent upon federal loans or grants. All other workers merit no less consideration. But extortion or blackmail visited upon private persons in respect of their private rights or property are offenses which, under our federal system, have been left to the criminal administration of the states. A proper regard for that tradition requires that "a

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It could serve no useful purpose to enter upon a discussion as to whether the conduct alleged in the indictments amounted to extortion or blackmail. It is sufficient that, unless a need to protect some federal interest is present or inheres in the conduct such as that described in the indictments is ordinarily left for condemnation by the states. At common law, extortion as the taking, by color of office, of money or other thing of value that is not due, before it is due or more than is due. See Annotation 4 L. R. A. p. 390; 2 Wharton, Criminal Law (Twelfth Ed.) § 1304. The offense required an official as the perpetrator. In some of the states, however, the scope of the offense has been enlarged so as to include any obtaining of property of another with his consent through a wrongful use of force or fear, under circumstances not amounting to robbery. In some jurisdictions the crime of blackmail is punished by statute and the crime is said to be indistinguishable from that of extortion. 22 Am. Jr. Extortion and Blackmail, § 2, pp. 234-235. In such instances where the common law definition of extortion has been enlarged by statute to include what is ordinarily termed "blackmail" the offense may be committed by a private individual. Am. Jr. *op. cit. supra*, § 18, p. 238. It has been said that "The statutes of California probably illustrate the nature of the statutes in other states upon the sub-

372 federal criminal statute be not construed so as to duplicate state offenses unless Congress has plainly exhibited an intention so to do. Such should be the approach in construing a federal statute, particularly because of the historic role of the states in ordinary matters of criminal administration and because the same personal conduct can be made both a state and a federal offense without violating the double jeopardy clause of the Constitution. Jerome v. United States, — U. S. — (decided February 1, 1943). Under the construction of the statute, here involved, which the government necessarily urges in an effort to sustain the indictments, the blackmailer, who, wholly unconnected with his victim's employment, requires and receives a part of the employee's wages each week for withholding knowledge of something which the latter desires to keep secret from his employer lest he lose his job, would be equally indictable. Clearly, the statute was not so intended. Furthermore, any such extension of its scope suggests the possible invasion of the field of private rights and wrongs, unrelated to any federal interest or concern, which Congress is without constitutional warrant to enter upon. "The regulation of the conduct of its own citizens belongs to the State, not to the United States." United States v. Constantine, 296 U. S. 287, 296.

None of the indictments in this case alleges that the employer did not pay its employees the wages to which they were entitled under their contracts of employment, or that the employees were prevented from receiving their wages in full, or that Laudani's exactions from employees were made for or at the instance of the employer. Nor were these omissions of material allegation mere oversights. The indictments specifically allege that the sums exacted from the employees were paid to or for Laudani. And the government proved at trial that the employer had paid its employees their wages in full in accordance with their contracts of employment, knew nothing of any exactions by Laudani or anyone else, and disapproved of such conduct on the part of anyone. Consequently, it is our opinion that the indictments were fatally defective in that they failed to allege an offense under the statute. The motions to quash should therefore have been sustained. So much disposes of the present appeal, but we deem it appro-
373 priate to advert to certain trial error in the hope that a like occurrence may be avoided in the future.

The defendant, testifying in his own behalf, denied that he had ever exacted any portion of the wages of any of the employees of the Cape Ann Granite Company. Only a relatively small num-

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ject of threats insofar as they constitute the crime of extortion." See Annotation 71 Am. State Reps. 446, 450. Section 518 of the California Penal Code provides: "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under cover of official right."

ber of that company's approximately one hundred employees had testified to opposite effect. The United States attorney argued to the jury that the defendant should have produced as witnesses the many employees whom he was not charged by the indictments with having induced to give up to him a portion of their wages, in order that they might testify that he had never exacted anything from them. The implication of the argument was unmistakable that the defendant's failure to call such witnesses furnished an inference that, had he called them, they would have testified adversely to him. This, of course, was improper. The permissible inference deducible from one's failure to produce evidence arises only when the evidence, if produced, would have been competent and admissible as relevant and material to the issues. Hall v. United States, 256 Fed. 748, 750–751 (C. C. A. 4); Hamburg-American Steam Packet Co. v. United States, 250 Fed. 747, 768 (C. C. A. 2). Not possibly could the defendant have refuted the employees who testified against him by calling other employees who were not qualified to testify respecting the matters actually in issue. In a quite similar situation in the Hall case, supra, the Court of Appeals for the Fourth Circuit characterized the district attorney's argument in such regard as "manifestly improper" and said that it imposed a burden upon the defendant not imposed upon him by law.

In the instant case counsel for the defendant promptly and appropriately objected to the argument for the government and moved that the objectionable remarks of the district attorney be stricken from the record and that the jury be instructed to disregard them. This, the trial judge refused to do, saying, "I could not tell the jury that because I don't think that would be quite accurate. Will you excuse me from making any further comments, if you don't mind? I will overrule your motion and give you an exception." What the Supreme Court said in Hall v. United States, 150 U. S. 76, 81–82, where the trial judge failed to act timely and directly upon the objection of defendant's counsel to the district attorney's argument, is quite apposite here, viz—

"The presiding judge, by declining to interpose notwithstanding the defendant's protest against this course of argument, gave the jury to understand that they might properly and lawfully be influenced by it; and thereby committed a grave error, manifestly
tending to prejudice the defendant with the jury, and which
374 therefore, was a proper subject of exception, and, having
been duly excepted to, entitles him to a new trial."

Here, likewise, the failure of the trial judge to rule upon the pertinent objection of defendant's counsel, of itself, served to aggravate further the error of the district attorney's improper ar-

gument; and a new trial would now be a necessary consequence, had the insufficiency of the indictments not intervened to put an end to the prosecution.

The judgment is reversed and the cause remanded with directions to the District Court to quash the indictments.

Dissenting opinion

BIGGS, Circuit Judge (dissenting).

I concur in the view expressed by the majority that the court below erred in permitting the prosecuting attorney to argue, over the objections of the defendant's counsel, that it was incumbent upon the defendant to produce as witnesses on his behalf the many employees of the Cape Ann Granite Company whom he was not charged by the indictment with having subjected to extortion so that they could testify that he had not exacted anything from them.

On the other hand I must dissent from the ruling to the effect that Section 1 of the Act of June 13, 1934, c. 482, Sec. 1, 48 Stat. 948, 40 U. S. C. A. § 276 b, the "Kick-Back Act," is not sufficiently broad to cover the acts of the defendant. I agree with the majority that the "contract of employment" referred to in the statute is the contract of employment between the employer and the employee and that the crime prohibited by the statute is the impairment or derogation of the employee's contractural right to the wages he is bound to receive under the contract. But to hold that the only person who is capable of offending against the statute is an employer, because only an employer is in privity of contract with the employee, is to emasculate needlessly an important criminal statute.

The defendant was a foreman employed by Cape Ann Granite Company. That company put him in charge of the stone masons employed by it. The defendant possessed the power to employ them or to discharge them and his connection with them was more direct and hence more influential than that of many a higher official of the Cape Ann Granite Company. The defendant was in privity to the contract by representation, his representation being that of his employer.

The language of the section is very broad and is ambiguous. It does not make use of the word "employer," though there is direct reference to the contract of employment and to the "person employed." The section uses the word "Whoever" to name the
375 person who may offend against the prohibition of the statute. "Whoever" means "Whatever person; any person soever."[2]

[2] Webster's New International Dictionary. The Universal Dictionary of the English Language defines the word as "Who, the person, any person, anybody, he who, whom, may." Funk & Wagnalls Concise Standard Dictionary defines "Whoever" as "any one without exception who."

From the very terms of the statute it is obvious as the majority cogently point out that the section was not intended to apply to instances of extortion unconnected with the contract of employment.[3] But the limitation imposed by the majority is too strict as the legislative history of the section demonstrates.

The bill (S. 3041) was the subject of a Senate Report, No. 803, 73rd Cong., 2nd Sess. Senator Stephens from the Committee on the Judiciary stated in part, "Hearings of the Senate Committee on Racketeering revealed that large sums of money have been extracted from the pockets of American labor, to enrich contractors, subcontractors, and their officials." Certainly if the president or a director of a corporation caused an employee to kick back a part of his wages under threat of dismissal the acts of such an "official" would be within the prohibition of the section. In my opinion a foreman is an official of a company. The defendant was not a stranger in fact or in law to the contract of employment. I think that his conduct falls within the prohibition of the statute.

While I agree with the majority that a criminal statute must be construed strictly, the construction should not be so strict as to deny the fair intendment of Congress. I conclude therefore that the acts which Laudani did were a violation of the statute. In arriving at this conclusion I am not unmindful of the decisions of Judge Kirkpatrick of the United States District Court for the Eastern District of Pennsylvania in United States v. Golder, 11 F. Supp. 870, 871, and in United States v. Charlick, 26 F. Supp. 963, 965. The words of that careful jurist are entitled to great weight but what he said in the cited cases was not apposite the question sub judice.

It follows therefore that while I concur in the view of the majority that the judgment of the court below should be reversed, I am of the opinion that a new trial should be ordered and that the direction of the majority that the indictment be quashed is in error.

A true Copy.

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

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[3] I wish to make plain as do the majority that the responsible officials of Cape Ann Granite Company were not aware of the course of conduct of Laudani, were not parties to it, and did not countenance it.

376 In the United States Circuit Court of Appeals for the Third Circuit

No. 7997—October Term 1942

UNITED STATES OF AMERICA

v.

FRANK LAUDANI, APPELLANT

Present: BIGGS, MARIS, and JONES, Circuit Judges

On Appeal From the District Court of the United States, for the District of New Jersey

Judgment

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby reversed, and the cause is remanded to the said District Court with directions to quash the indictments.

By the Court,

JONES, *Circuit Judge.*

MARCH 16, 1943.

[Endorsements:] Order Reversing Judgment, etc. Received and Filed March 16, 1943. Wm. P. Rowland, Clerk.

In the United States Circuit Court of Appeals for the Third Circuit

No. 7997

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

FRANK LAUDANI, DEFENDANT-APPELLANT

Order Extending Time for Petition for Rehearing

Present: MARIS and JONES, Circuit Judges

Upon consideration of the application by the United States Attorney for the District of New Jersey,

It is ordered that the time for filing a petition for rehearing in the above-entitled cause be and the same is hereby extended to April 7, 1943.

Philadelphia, March 31, 1943.

By the Court:

JONES, *Circuit Judge.*

[Received and Filed March 31, 1943. Wm. P. Rowland, Clerk.]

379 [Petition for rehearing covering 12 pages omitted from this print. It was denied, and nothing more by order of April 20, 1943.]

391 [Answer to petition for rehearing omitted in printing.]

395 In the United States Circuit Court of Appeals for the Third Circuit

No. 7997—October Term, 1942

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

FRANK LAUDANI, DEFENDANT-APPELLANT

Sur petition for rehearing

Present: BIGGS, MARIS, JONES, and GOODRICH, Circuit Judges

And now, to wit April 20, 1943 after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia.

By the Court:

MARIS, *Circuit Judge.*

Judge BIGGS dissents.

[Endorsements:] Order Denying Petition for Rehearing. Received & Filed Apr. 20, 1943. Wm. P. Rowland, Clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, Third Judicial Circuit,
Set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendix to Appellant's Brief, as constituting the portions of the record before this court at argument, and proceedings in this court in the case

of United States of America vs. Frank Laudani, appellant, No. 7997, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 4th day of May in the year of our Lord one thousand nine hundred and forty-three, and of the Independence of the United States the one hundred and sixty-seventh.

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals,
Third Circuit.

396 Supreme Court of the United States.

Order allowing certiorari

Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE (1943)

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29552—43

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

FRANK LAUDANI

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Third Circuit, entered March 16, 1943 (R. 376), setting aside convictions for violations of the Act of June 13, 1934, and directing the District Court to quash the indictments.

OPINIONS BELOW

The majority (R. 367–374) and dissenting (R. 374–375) opinions in the Circuit Court of Appeals are not yet reported. The memorandum opinion of the District Court overruling petitioner's demurrer and motion to quash the indictments appears at R. 37–42.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 16, 1943 (R. 376), and a petition for rehearing (R. 379–390) was denied April 20, 1943 (R. 395). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The Kick-back Act prohibits inducing any person employed on a public work financed by the United States to give up any part of the compensation to which he is entitled under his contract of employment. The question presented is whether this prohibition applies to a foreman acting solely in his own interest, or whether it applies only to the employer and those acting in his behalf.

STATUTE INVOLVED

Section 1 of the Act of June 13, 1934 (c. 482, 48 Stat. 948, 40 U. S. C. 276b), commonly called the Kick-back Act, provides:

> whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat

of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

STATEMENT

Respondent and one Alfredo Rossi, together with several others, were charged in a series of indictments with violations of the Kick-back Act of June 13, 1934 (R. 20–26, 367). Except for differences in names of the defendants and allegations as to the names of victims, dates of the violations, and sums of money exacted, the counts of the indictments were couched in identical language (R. 21, 37). They alleged that between January 1, 1937, and May 15, 1938, there was under construction at Weehawken, New Jersey, certain public works known as the Weehawken Plaza connection of the Lincoln Tunnel under the Hudson River from New York to New Jersey; that the work was being constructed under a contract between the Port of New York Authority and George M. Brewster & Son, Inc., the general contractor, and a subcontract between the Brewster Company and the Cape Ann Granite Company for the furnishing and setting of granite rubble facing and coping necessary in the construction of the Weehawken Plaza connection; that all of this public work was being financed in part by grants from the United States; that respondent was foreman for the Cape Ann Granite Company, with author-

ity to employ and discharge stone cutters and masons, and knew that the rate of pay for such employees, as fixed and posted on the work, was a certain amount per hour and that these employees were entitled to receive the full posted rate of pay without deductions for any purpose; and that respondent and his co-defendants, by intimidation and threats of dismissal and by giving to understand that all persons employed on the work would be required to give the defendants parts of their true wages so long as they were so employed, induced certain named employees to surrender to them parts of the compensation to which the employees were entitled for work and labor on the public work (R. 21–26, 38–39).

The defendants filed a demurrer (R. 26–31) and motion to quash (R. 32–36) the indictments on the ground, *inter alia*, that it was not alleged that they were the employers of the victims, or that they were acting in behalf of the employer in inducing the victims to give up part of the compensation to which they were entitled.[1] The demurrer and motion to quash were overruled (R. 37–42).

The Government elected to proceed on five of the indictments, and, after a severance as to the defendants other than respondent and Rossi,

[1] This objection was renewed at the opening of the trial (R. 44–47), at the close of the Government's case (R. 207–208), and the conclusion of all the evidence (R. 273, 279), and in a motion in arrest of judgment (R. 319–320), and was in each instance overruled (R. 47, 208, 275, 280, 320).

these indictments were consolidated for trial (R. 47–49). Respondent was convicted on one or more of the counts in four of the indictments tried (R. 316–317),[2] and he was sentenced to nine months' imprisonment on each count, the sentences to run concurrently (R. 333).

The evidence in support of the allegations of the counts on which respondent was convicted may be summarized as follows:

In 1935 the Port of New York Authority undertook to construct, as part of the Lincoln Tunnel project, certain installations at the New Jersey approach, and the United States, through the Public Works Administration, granted $1,780,000 to the Authority to aid in financing these works (Ex. G. 5, R. 58; R. 75). Contracts for portions of the works were let by the Authority to George M. Brewster & Son, Inc. (Ex. G. 6, R. 59; Ex. G. 7, R. 60), and the latter, in turn, sublet to the Cape Ann Granite Company, Inc., contracts for furnishing and setting granite rubble facing and coping at the Weehawken, New Jersey, approach to the tunnel (Exs. G. 8, G. 9, R. 63). Pursuant to the requirements of Title II, Section 206 of the National Industrial Recovery Act (June 16,

[2] At the close of the trial the Government consented to the dismissal as to respondent of all three counts of indictment numbered 10C; and seventeen of the counts of the remaining four indictments (R. 276–279, 316–317). Nine counts were submitted to the jury, and respondent was convicted on each of these (R. 316–317, 332). The defendant Rossi was acquitted on the counts submitted as to him (R. 316–317).

1933, c. 90, 48 Stat. 195, 204–205, 40 U. S. C. 406) and regulations promulgated thereunder, both the prime and subcontracts (the latter by reference to the prime contracts (see Ex. G. 8, p. 4; Ex. G. 9, pp. 1, 3)) contained provisions fixing minimum wage rates for employees, and requiring that each employee be paid the full amount accrued to him without deductions or rebates and that a statement of all wage rates be posted at the site of the work (Ex. G. 6, pp. 44–45; Ex. G. 7, pp. 93–94).

As foreman for the Cape Ann Granite Company on the Weehawken approach, respondent had power to employ and discharge employees (R. 72, 234). The victims named in the counts on which respondent was convicted testified that they were hired by him (R. 83, 121, 133, 141) and that they "kicked back" to him directly or through other workers on the job from 25 to 35 cents of their wages for each hour of their employment (R. 84, 86, 87–88, 89, 90, 94, 104, 124–126, 129, 134–139, 142; see also R. 148, 152). The witnesses were compelled to make these payments as a condition of their obtaining and continuing their employment (R. 84–85, 87–88, 109, 134–135, 136). The Cape Ann Granite Company did not authorize these activities of respondent and knew nothing of them (R. 72–73; see also R. 242).

The court below reversed the convictions and remanded the cause with directions to quash the

indictments (R. 374) on the ground that the prohibitions of the Kick-back Act apply only to the employer and persons acting for or on his behalf and not to other persons not in privity of contract with the employer (R. 370). Circuit Judge Biggs dissented on this issue of statutory construction (R. 374).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the Kick-back Act is not applicable to a foreman having authority to employ and discharge employees, who, unknown to the employer, by threats of dismissal, forces employees under his supervision to give up to him part of the wages to which they are entitled under their contracts of employment.

2. In remanding the cause with directions to the District Court to quash the indictments.

REASONS FOR GRANTING THE WRIT

The decision below is the first decision of a circuit court of appeals construing the Kick-back

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The court below unanimously held (R. 373, 374) that the trial court committed reversible error in permitting the prosecutor to argue to the jury that respondent should have produced as witnesses the many employees of the Cape Ann Granite Company whom he was not charged with having subjected to extortion, so that they might testify that he had not exacted anything from them (R. 283-285). We do not here contend this holding of the court below as error; hence, if this Court should grant the petition and sustain our position on the question of statutory construction, the case should be remanded for a new trial.

Act. In limiting the prohibition of that Act so as to exclude its application to foremen, the court below, in a divided opinion, has rendered a decision of first importance in the enforcement of the statute. The decision, we believe, is not warranted by the statutory language, history, or purpose.

1. The language of the Kick-back Act is broadly phrased. In terms it applies to "whoever" forces employees on public works to give up any part of the wages to which they are entitled under their contracts of employment. The court below, however, emphasized the phrase "contract of employment" and reasoned that since only the employer is in privity of contract with the employee, only the employer can impair the employee's contractual right which the statute is designed to protect. We submit that that phrase serves only to identify the amount of wages which may not be subtracted by the forbidden means, and limits application to extortion connected with employment. It does not exclude persons such as foremen. To the contrary, the phrase "threat of procuring dismissal from such employment" in the statement of means whereby an employee is induced to give up part of his compensation, manifests a purpose to cover persons other than the employer, for the latter may directly dismiss the employee, rather than "procure" his dismissal. Certainly, if the statute extends to one who may *procure* the dismissal of an employee, it applies as well to one who, like respondent, is vested with authority to hire and fire and is therefore in a particularly advantageous

position to exact tribute from employees under his supervision.

2. The history of the statute evidences a purpose to apply to practices of foremen on public works. The statute resulted from hearings before a subcommittee of the Senate Committee on Commerce pursuant to S. Res. 74 (73d Cong., 2d Sess.) and before a subcommittee of the Senate Committee on Education and Labor pursuant to S. Res. 228 (73d Cong., 2d Sess.). At these hearings there was much evidence concerning the practices of contractors in forcing employees to return part of their compensation. In addition, however, witnesses testified concerning instances of foremen's extorting money from employees for the privilege of working. Thus, one witness told of how a foreman forced employees to buy tickets at $5.00 each for fictitious shore dinners (Hearings Before a Subcommittee of the Senate Committee on Commerce, *supra*, Vol. 1, Pt. 5, pp. 790–791). Another testified that every week, following pay day, he and his fellow employees were each compelled to kick back to their foreman 50 cents for each hour they worked (Hearings Before a Subcommittee of the Senate Committee on Education and Labor, *supra*, Pts. 1 and 2, pp. 341–342).[5] While the committee reports were very brief and did not advert directly to kick-back practices on the part of foremen,

[5] See also, *Id.*, pp. 152, 159, 333, 428; Hearings Before a Subcommittee of the Senate Committee on Commerce, *supra*, pp. 801, 811; cf. pp. 817–818.

the Senate Committee on the Judiciary, which reported the bill favorably, stated that "Hearings of the Senate Committee on Racketeering revealed that large sums of money have been extracted from the pockets of American labor, to enrich contractors, subcontractors, and their officials" (S. Rep. No. 803, 73d Cong., 2d Sess.; R. 359). In view of the evidence before the investigating committees that foremen were guilty of such abuses, it would seem that the Judiciary Committee's reference to "officials" included foremen, as well as higher company executives.[5] A further indication that Congress intended the statute to extend to foremen is found in the brief discussion of the bill on the floor of the House, when Chairman Sumners of the Judiciary Committe stated, in response to a direct inquiry, that it was intended to apply to abuses which were disclosed by the Senate committee of which Senator Walsh was the chairman (the subcommitee of the Senate Committee on Education and Labor) (78 Cong. Rec. 10759).

Moreover, contrary to the view of the majority of the court below that the construction for which

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[5] The report of the House Committee on the Judiciary referred only to "the so-called 'kick-back racket' by which a contractor on a Government project pays his laborers wages at the rate the Government requires him to pay them, but thereafter forces them to give back to him a part of the wages they have received" (H. Rep. No. 1750, 73d Cong., 2d Sess.; R. 360).

the Government contends should not be accepted because it would project the statute into fields already covered by state criminal laws, the hearings before the Senate committees show that they recognized that the proposed legislation would partially overlap state law.[6] In view of this and the broad language of the statute, the implication is clear that Congress intended to extend federal protection to workers theretofore protected only by state law in order to insure the effectuation of federal policy in respect of wages on public works.

3. The question involved, though novel, is one of large public importance for, as the majority opinion points out (R. 370–371), the statute applies alike to all public works for which the United States directly contracts and to federally aided works undertaken by other public bodies.[7] The decision below relieves from the prohibitions of the statute a large class of persons who, by reason of their position of authority, are able to force employees to "kick back" to them for their own enrichment a portion of the earnings to which the employees are entitled. To this extent the de-

[6] See Hearings Before a Subcommittee of the Senate Committee on Commerce, *supra*, at pp. 817–818; Hearings Before a Subcommittee of the Senate Committee on Education and Labor, *supra*, at pp. 23–24, 416–417.

[7] See Bacon-Davis Act, as amended, 46 Stat. 1494, 49 Stat. 1101, 54 Stat. 399, 4 U. S. C. 276a. See also S. Rep. No. 803, 73d Cong., 2d Sess.

cision frustrates the Congressional purpose to secure to employees on public works the full benefits of their labor.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

MAY 1943.

U. S. GOVERNMENT PRINTING OFFICE 1943

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 71

THE UNITED STATES OF AMERICA, PETITIONER

v.

FRANK LAUDANI

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 241–248) and dissenting (R. 248–249) opinions in the Circuit Court of Appeals are reported at 134 F. (2d) 847. The memorandum opinion of the District Court overruling respondent's demurrer and motion to quash the indictment appears at R. 25–29.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 16, 1943 (R. 250), and a petition for rehearing was denied April 20, 1943

(R. 251–252). The petition for a writ of certiorari was filed May 24, 1943, and granted October 11, 1943 (R. 252). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules, promulgated by this Court May 7, 1934.

STATUTE INVOLVED

Section 1 of the Act of June 13, 1934 (c. 482, 48 Stat. 948, 40 U. S. C. 276b), commonly called the "Kick-back" Act, provides:

> That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.[1]

[1] The Act is in two sections, the second of which reads (40 U. S. C. 276c):

> To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit

QUESTION PRESENTED

Whether the prohibition of Section 1 of the "Kick-back" Act applies to a foreman who has authority to hire and discharge employees and who, acting for his own benefit and not on behalf of the employer, compels them to surrender a portion of their wages to him as a prerequisite to the retention of their jobs.

STATEMENT

Respondent and one Rossi, together with several others, were charged in a series of indictments with violations of the "Kick-back" Act of June 13, 1934 (R. 14–18, 241–242). Except for differences in names of the defendants and in allegations as to the names of victims, dates of the violations, and sums of money exacted, the counts of the indictments were couched in identical language (R. 14, 25–26). They alleged that between January 1, 1937, and May 15, 1938, there was under construction at Weehawken, New Jersey, a certain public work known as the Weehawken Plaza connection of the Lincoln Tunnel under the

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with respect to the wages paid each employee during the preceding week.

[The functions of the Secretaries of the Treasury and the Interior under this section were transferred to the Secretary of Labor, to be administered by him or under his direction or supervision by such agency in the Department of Labor as he should designate, by Reorganization Plan No. IV, Section 3, effective June 30, 1940 (see note under 40 U. S. C. A. 276c).]

Hudson River from New York to New Jersey; that the work was being done under a contract between the Port of New York Authority and George M. Brewster & Son, Inc., the general contractor, and a subcontract between the Brewster Company and the Cape Ann Granite Company, Inc., for the furnishing and setting of granite rubble facing and coping necessary in the construction of the Weehawken Plaza connection; that all of this public work was being financed in part by grants from the United States; that respondent was foreman for the Cape Ann Granite Company, with authority to employ and discharge stonecutters and masons, and knew that the rate of pay for such employees, as fixed and posted on the work, was a certain amount per hour, and that these employees were entitled to receive the full posted rate of pay without deductions for any purpose; and that respondent and his codefendants, by intimidation and threats of dismissal and by giving to understand that all persons employed on the work would be required to give the defendants parts of their true wages so long as they were so employed, induced certain named employees to surrender to them parts of the compensation to which the employees were entitled for work and labor on the public work (R. 14–15, 26).

The defendants filed a demurrer (R. 19–22) and motion to quash (R. 22–25) the indictments

on the ground, *inter alia*, that it was not alleged that they were the employers of the victims, or that they were acting on behalf of the employer in inducing the victims to give up part of the compensation to which they were entitled (R. 19, 20, 23). The demurrer and motion to quash were overruled by the judge hearing them, in a written opinion (R. 25–29).[2]

The Government elected to proceed on five of the indictments, containing 29 counts, and after a severance as to the defendants other than respondent and Rossi these indictments were consolidated for trial (R. 32–33). Respondent was convicted on nine of the counts in four of the indictments tried (R. 208, 218),[3] and he was sentenced to nine months' imprisonment on each count, the sentences to run concurrently (R. 219).[4]

The evidence in support of the allegations of the counts on which respondent was convicted may be summarized as follows:

[2] The case was tried before another judge, and the same objection was renewed at the opening of the trial (R. 30–32), at the close of the Government's case (R. 135–136), and at the conclusion of all the evidence (R. 179, 183), and by a motion in arrest of judgment (R. 210), and was in each instance overruled (R. 32, 136, 180, 183–184, 210).

[3] At the close of the trial the Government consented to the dismissal as to respondent of all three counts of one indictment and seventeen of the counts of the remaining four indictments (R. 180–182, 208).

[4] Rossi was acquitted on all the counts submitted as to him (R. 208).

In 1936 the Port of New York Authority undertook to construct, as part of the Lincoln Tunnel project, certain installations at the New Jersey approach, and the United States, through the Public Works Administration, granted $4,780,000 to the Authority to aid in financing these works (Ex. G–5, R. 39; R 50). Contracts for portions of the works were let by the Authority to George M. Brewster & Son, Inc. (Exs. G–6, G–7, R. 40), which, in turn, entered into subcontracts with the Cape Ann Granite Company, Inc., for furnishing and setting granite rubble facing and coping at the Weehawken, New Jersey, approach to the tunnel (Exs. G–8, G–9, R. 42). In accordance with the requirements of Title II, Section 206, of the National Industrial Recovery Act (June 16, 1933, c. 90, 48 Stat. 195, 204–205; 40 U. S. C. 406) and regulations promulgated thereunder (44 C. F. R. 265.1, 265.11–265.34), both the prime and subcontracts—the latter by reference to the former (see Ex. G–8, p. 4; Ex. G–9, pp. 1, 3)—contained provisions fixing minimum wage rates for employees and requiring that a statement of all wage rates be posted at the site of the work and that each employee be paid the full amount accrued to him, without deductions or rebates (Ex. G–6, pp. 44–45; Ex. G–7, pp. 93–94), regardless of any contractual relationship between the employer and such employee (Ex. G–7, p. 97).

As foreman for the Cape Ann Granite Company on the Weehawken approach, respondent had power to hire and discharge employees (R. 48, 117, 153). Victims named in counts on which re-

spondent was convicted testified that they were hired by him (R. 55, 79, 87, 92) and that, of the wages they received from the company, which did not differ from the posted rates, they "kicked back" to respondent, directly or through other workers on the job, from 25 to 35 cents for each hour of their employment (R. 56–59, 61–63, 68, 81–82, 84, 87–91, 93; see also R. 48–49, 97, 99–100). The victims were compelled by respondent to make these payments as a condition of obtaining and retaining their employment (R. 56–58, 65, 88–89). The Cape Ann Granite Company did not authorize these activities on the part of respondent and knew nothing of them (R. 48–49; see also R. 159).

On appeal to the Circuit Court of Appeals for the Third Circuit, respondent's conviction was reversed and the case was remanded to the District Court with directions to quash the indictments (R. 248, 250). This decision (R. 241–248), from which one judge dissented (R. 248–249), was based upon the ground that "the facts alleged and proven by the government do not lay a case within the purview of the statute * * *" (R. 242). The basis of the decision was, primarily, that "the statute as written" is confined in its "application to a situation where the employee gives up or cedes a portion of his contractual wage to or in favor of or at the instance of the employer or one acting for or on behalf of the employer" (R.

243). The employer must be "enriched" by the giving up by the employee of a part of his compensation (R. 244).[5]

In reaching this conclusion the majority reasoned as follows: The evil at which the statute is aimed is the inducing of the employee to give up part of the compensation to which he is entitled under his "contract of employment." The "contract of employment" means "the contract between the employee and his employer."[6] It is essential, therefore, to the crime defined by the statute that there be "the impairment, violation or derogation of the employee's contractual right with respect to the wages he is to receive." The one who is "capa-

[5] The court, therefore, did not find it necessary to pass upon the contention made by respondent, as appears from his brief in that court, that the evidence was insufficient in other respects to convict, and consequently it did not review the evidence in that connection (R. 242). The brief of respondent in the Circuit Court of Appeals discloses also that there were other contentions as to the rejection of evidence, refusal of requested instructions, and modifications of requested charges which were not passed upon by that court. This brief will, consequently, discuss only the question of statutory construction upon which the decision rested.

Since the case will, we believe, have to go back to the district court for a new trial because of error in the argument of the prosecutor (see footnote 9, *infra*, p. 13), it may be appropriate, if the Government is right in the position which it takes in this brief, to remand the case to the Circuit Court of Appeals so as to give that court an opportunity to pass upon the questions which it did not consider, before any retrial is attempted.

[6] Citing *United States* v. *Golder*, 11 F. Supp. 870, 871 (E. D. Pa.).

ble of so offending, because of the requisite privity of contract, is the employer." The employee, therefore, must give up or cede to the employer, either directly or to someone acting for him, some portion of the wages to which his contract with the employer entitles him.[7] (R. 243–244.)

The majority found support for this view in the expressed purpose of the statute, as reflected in its title: "An Act to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes." It said: "So long, therefore, as the employer pays his employees the wages to which they are entitled under their contracts of employment and the employees are not induced or required to give back any part of their compensation, it cannot be said that they have been prevented from receiving the compensation to which their contracts of employment entitle them"; that "What happens to the compensation after the employee has received it in full, and wholly without relation to or effect upon his contract of employment, is a matter with which this statute does not purport to deal" (R. 244).

The legislative history was thought to leave little doubt that the Act "was intended to penalize con-

[7] Citing the *Golder* decision and *United States v. Charlick*, 26 F. Supp. 203, 205 (E. D. Pa.), both decided by the same judge, and 19 Comp. Gen. 576, 577–578 (R. 237–240).

tractors who, enjoying federal work or work federally aided,[*] unconscionably enrich themselves at the expense of their employees in denial of their contracts of employment" (R. 244).

The majority also attached some significance to Section 2 (footnote 1, *supra*, pp. 2–3), which authorized the Secretaries of the Treasury and the Interior jointly to make reasonable regulations "for contractors or subcontractors" on the work specified in Section 1 (R. 244–245). This provision was included, the majority said, as an aid to the enforcement of Section 1 (the penal provision); and it apparently felt that Section 1 for this reason cannot be given a broader coverage of persons than Section 2.

In further elucidation of the basis of its decision, the majority stated that "nowhere in the Act, its title, or its legislative history is it suggested that it was intended thereby to reach an extortioner or

[*] The majority stated (R. 245):

> Of course, no distinction is to be drawn, and we make none, between work for which the government directly lets a contract to which "the prevailing rate" of wage to the contractor's employees attaches by virtue of the Act of March 3, 1931, c. 411, § 1, 46 Stat. 1494, as amended, and federally aided work performed for other public agencies to which rates of pay to employees attach by virtue of competent federal departmental regulations. The "Kick-Back Act" is broad enough to embrace all work financed in whole or in part by federal funds. In fact, the bill (S. 3041) was purposely amended in such regard in Senate committee. See Senate Report, supra. [S. Rep. No. 803, 73d Cong., 2d sess. (R. 235).]

blackmailer (not privy to the contract of employment) merely because the persons upon whom such an offender preys receive their compensation as employees of a contractor doing public work financed in whole or in part by federal aid"; that "no greater need for federal protection of workers against the threats of extortioners or blackmailers in general is indicated simply because their employer happens to derive all or a part of his income from work dependent upon federal loans or grants"; that "All other workers merit no less consideration." It said that a court was not justified in so extending the statute, as such a construction would involve offenses which, under our federal system, have been left to the criminal administration of the States, a pattern which should be adhered to in the absence of clear indication of a congressional design to duplicate state offenses; and it emphasized that the statute is penal and as such should be strictly construed. The majority also stated that any such extension of the scope of the statute, which it thought was inherent in the Government's interpretation, "suggests the possible invasion of the field of private rights and wrongs, unrelated to any federal interest or concern, which Congress is without constitutional warrant to enter upon." (R. 245–246.)

The dissenting judge agreed with the majority that the "contract of employment" referred to in the statute is the contract between the employer

and the employee; that the crime prohibited by the statute is the impairment or derogation of the employee's contractual right to the wages he is entitled to receive under the contract; and that the statute was not intended to apply to instances of extortion unconnected with the contract of employment (R. 248–249). But he was of the opinion that "to hold that the only person who is capable of offending against the statute is an employer, because only an employer is in privity of contract with the employee, is to emasculate needlessly an important criminal statute" (R. 248). He pointed out that while the language of the section is "very broad and is ambiguous," it does not make use of the word "employer" but uses the word "whoever" in reference to the person who may offend against the prohibition of the statute. He also felt that the legislative history demonstrates that its prohibition is not confined to the conduct of the employer but also covers the like enrichment of company "officials." (R. 248, 249.) He emphasized that the respondent was not a stranger in fact or in law to the contract of employment; that his company had employed him as foreman and put him in charge of the stonemasons, with the power to employ and discharge them; that his connection with these workmen was more direct and hence more influential than that of many a higher official of the company; that respondent was hence "in privity to the contract by representation, his rep-

resentation being that of his employer" (R. 248–249). He added that "Certainly, if the president or a director of a corporation caused an employee to kick back a part of his wages under threat of dismissal the acts of such an 'official' would be within the prohibition of the section. In my opinion, a foreman is an official of a company." While he agreed that the statute should be strictly construed, he stated that it should not be given a construction "so strict as to deny the fair intendment of Congress."[*] (R. 249.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the "Kick-back" Act is not applicable to a labor foreman having authority to employ and discharge employees, who, unknown to the employer, by threats of dismissal, forces employees under his supervision to give up to him part of the wages to which they are entitled under their contracts of employment;

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[*] Both the majority and dissenting judges (R. 246, 247, 248) agreed that the trial court committed reversible error in permitting the prosecutor to argue to the jury, over objection, that respondent should have produced as witnesses the numerous employees of the company whom he was not charged by the indictment with having subjected to extortion, so that they might testify that he had not exacted anything from them. We do not contend that this part of the decision of the court below was error. Hence, we concede that there must be a new trial even though the Court sustains our position on the question of statutory construction.

(2) In remanding the cause with directions to the District Court to quash the indictments.

SUMMARY OF ARGUMENT

The majority in the court below held that Section 1 of the "Kick-back" Act applies solely "to a situation where the employee gives up or cedes a portion of his contractual wage to or in favor of or at the instance of the employer or one acting for or on behalf of the employer." The "kick-back" must enrich the employer. Consequently, it held the section does not apply to a labor foreman of a corporation, acting on his own behalf, who, invested with the power to employ and discharge workmen, required them, under threat of dismissal from their employment, to give up to him a part of the wages which the company had paid them pursuant to its obligations.

This interpretation, espoused only by a minority of those judges who have construed the statute, is not supported by the statute's language, its manifest purpose, or its legislative history. Respondent's conduct is, we submit, within the statute.

1. The statute punishes "whoever" shall do that which is prohibited, i. e., "anyone" or "any person." It has been the custom of Congress to insert in penal statutes words of limitation following the word "whoever" where a limitation as to the coverage of offenders is intended. In labor legisla-

tion itself Congress has demonstrated that such general language as "any person" is not apt terminology where the employer alone is intended to be covered (see provisions of the Fair Labor Standards Act set out at p. 23, *infra*). If such a limitation had been intended in that portion of the instant statute which is in controversy, appropriate language was particularly needed in view of the reference to employers (contractors and subcontractors) in Section 2 and the breadth of the language utilized in describing the action prohibited. The exaction of a "kick-back" of wages from an employee "by force, intimidation, threat of procuring dismissal from such employment, or by any other maner whatsoever," certainly does not suggest methods which only an employer or one acting on his behalf would be capable of using.

2. There is nothing in the statute which indicates that Congress was concerned only with a breach of the contract of employment by the employer and intended merely to add criminal penalties for such a breach. As is evident from its sweeping terminology and avowed purpose, the statute had a broader and not quite so technical an end in view.

The statute was passed, as its title indicates, "to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder * * *." The two statutes which the "Kick-back" Act was pri-

marily intended to fortify were the Davis-Bacon Act of March 3, 1931, and Title II of the National Industrial Recovery Act of June 16, 1933, particularly Section 206. Broadly stated, these statutes, which cover contracts for certain public construction by the United States as well as construction aided by Federal loans and grants to States, municipalities or other public bodies, made provision for the insertion in the contracts of stipulations to pay "the prevailing rate of wages" for similar work in the community in which the project is located (Davis-Bacon Act) and "just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort" (Section 206, Title II, National Industrial Recovery Act). It was vital to the success of this program of spreading purchasing power among the lower income groups and of eradicating substandard wages from federally financed projects, a program born out of national economic distress, "that the dollar which is intended for labor goes to that labor." While the "Kick-back" Act was not limited to contracts authorized by these statutes, there can be no doubt that the purpose of Congress in enacting it was to make it as certain as a criminal statute can that the intended recipient of wages made possible by the Government's money should have the full enjoyment and benefit of those wages; that no one should induce the workman to give up any part of the wages *qua* wages to which he is

entitled under his contract of employment. The purpose of the language in the statute "compensation to which he [the employee] is entitled under his contract of employment," is simply, therefore, to identify the money with which the statute is concerned—money paid as wages in connection with the performance of federally financed projects. While there must be a diversion of compensation, as such, to which the employee is entitled by virtue of his employment on a federally financed project, obviously a diversion of that type may be made as well by others as by an employer or one acting on his behalf; there is certainly nothing in the statute which indicates that the diversion must be by the latter or that it must result in the enrichment of the employer in contrast with others.

The conduct of the respondent, as the dissenting judge pointed out, was not at all unrelated to his victims' employment and comes clearly within the language of the statute as well as the evil it was designed to prevent. As he said, to accept the construction of the majority is "to emasculate needlessly an important criminal statute."

3. The interpretation contended for by the Government comports with accepted canons of construction and involves no constitutional difficulty. It is also fortified by the legislative history, which shows that Congress, when it enacted the statute involved, was aware that the responsibility for the

"kick-back racket" was shared not only by employers but also by foremen acting independently and by others having no relation to the employer. With this knowledge it provided, as a remedy, a penal statute sweeping in its terms and containing no limitation which, properly, can be construed as restricting it to action by or on behalf of the employer.

ARGUMENT

THE VIEW OF THE MAJORITY BELOW THAT THE STATUTE ENCOMPASSES ONLY A "KICK-BACK" TO AN EMPLOYER IS NOT SUPPORTED BY THE LANGUAGE OF THE STATUTE, ITS LEGISLATIVE HISTORY, OR ITS MANIFEST PURPOSE. THE RESPONDENT'S CONDUCT IS WITHIN THE STATUTE

This case is in narrow compass. It involves a labor foreman of a corporation which was participating as a subcontractor on public construction financed in part by federal funds. The company placed him in charge of a certain class of workmen and invested him with authority to employ and discharge such workmen. Clothed with the power which this grant of authority gave him, he required the workmen, as a prerequisite to the obtaining and retention of their jobs, to "kick back" to him a part of the wages which the company had paid them pursuant to its obligations. The company had not authorized the perpetration of this racket,[10]

[10] Presumably what is meant by the testimony to this effect is that those officials of the corporation who were empowered to set its policies had not sanctioned respondent's misbehavior.

did not know of it, and received none of its proceeds. The question presented is whether this conduct of the foreman is within the proscription of the "Kick-back" Act. The majority below held that it is not, because the statute interdicts only action by the employer or on his behalf; in other words, that the statute relates solely to the enrichment of the employer. We submit that there is no warrant for this construction in the language of the statute, its legislative history or its obvious purpose; and that the statute embraces the misconduct of respondent.[11]

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[11] Seven judges have had occasion to pass on the question of statutory construction which this case presents. Four have entertained a view contrary to that of the majority below (the two district judges and the dissenting judge in the Circuit Court of Appeals in this case, and the district judge in *United States* v. *McGraw*, 47 F. Supp. 927 (N. D. N. Y.), a decision to which he later adhered, despite the *Laudani* decision, in *United States* v. *Fuller*, decided September 7, 1943 (unreported officially, but copied in 6 Wage Hour Rept. 1090, 1091), saying: "A lower court should, and naturally does, give careful and serious study to the decisions of appellate courts of other circuits. After doing this, I find myself unable to accept the *Laudani* case as an authority here. I cannot narrow the statute to the confines of that case.").

Another district judge, in *United States* v. *Carbone* (Mass.), after overruling a demurrer to an indictment charging a conspiracy to violate the statute and also substantive violations thereof, which offenses did not involve or contemplate enrichment of the employer, sustained a motion to quash upon being advised of the decision of the majority below in the present case. The *Carbone* case is being held in abeyance, pursuant to a petition for rehearing filed by the Government, pending the disposition of the instant case.

The statutory language and design.—Unless it be found in the description of the action proscribed, there is clearly no language in the statute which limits its application to action by or on behalf of an employer. The statute does not say that "any employer" who shall do that which is inhibited shall be punished, but uses the word "whoever" to describe the persons subject to the Act. No broader word could have been used since the word "whoever" means, of course, "anyone" or "any person."[12] "Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them."[13] Moreover, an examination of the federal criminal statutes shows that when Congress has commenced them with the word "whoever," it has been its custom, in awareness of the breadth of that word, to insert words of limitation immediately following if a limitation as to the coverage of those who can offend is intended.[14] It is therefore only reasonable to be-

[12] Funk & Wagnalls, *New Standard Dictionary* (1937), p. 2709 ("anyone, without exception"); Webster's *New International Dictionary* (2d ed., 1936), p. 2921.

[13] *Caminetti* v. *United States*, 242 U. S. 470, 485–486, 490; *Woolford Realty Co.* v. *Rose*, 286 U. S. 319, 327; *United States* v. *Wurts*, 303 U. S. 414, 417.

[14] In Title 18 alone of the United States Code there are no less than 250 separate criminal provisions introduced by the word "whoever." As evidencing the custom of Congress to insert words of limitation immediately following the word "whoever" when a limitation as to offenders is in fact intended, see, for examples, 18 U. S. C. 1 ("Whoever, owing

lieve that had Congress intended the "Kick-back" Act to apply, as the majority below held (R. 243), solely "to a situation where the employee gives up or cedes a portion of his contractual wage to or in

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allegiance to the United States"): 18 U. S. C. 37 ("Whoever, being a person belonging to the armed land or naval forces of a belligerent nation or belligerent faction of any nation and being interned in the United States"): 18 U. S. C. 75 ("Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments"): 18 U. S. C. 77a ("Whoever not being an officer, agent, or employee of the United States"): 18 U. S. C. 109 ("Whoever, except forest rangers," etc.): 18 U. S. C. 124 (Whoever, being engaged in the importation into the United States of any goods, wares, or merchandise, or being interested as principal, clerk, or agent in the entry of any goods, wares, or merchandise"): 18 U. S. C. 125 ("Whoever, being an officer of the revenue"): 18 U. S. C. 127 ("Whoever, being a consul, or vice consul, or other person employed in the consular service of the United States"): 18 U. S. C. 172 ("Whoever, being an officer, clerk, agent, employee, or other person charged with the payment of any appropriation made by Congress"): 18 U. S. C. 173 ("Whoever, being a disbursing officer of the United States, or a person acting as such"): 18 U. S. C. 184 ("Whoever, being an officer of the United States"): 18 U. S. C. 185 ("Whoever, being a clerk or other officer of a court of the United States"): 18 U. S. C. 189 ("Whoever, being an officer, clerk, agent, or other person holding any office or employment under the Government of the United States"): 18 U. S. C. 214 ("Whoever, being an officer or employee of the United States or a person acting for or on behalf of the United States in any capacity under or by virtue of the authority of any department or office thereof"): 18 U. S. C. 238 ("Whoever, being a judge of the United States"): 18 U. S. C. 492 ("Whoever, not being an owner"): 18 U. S. C. 497 ("Whoever, being a captain or other officer or mariner of a vessel upon the high seas," etc.): and 18 U. S. C. 3, 192, 193, 194, 195, 198, 199, 202, 203, 204, 205, 207, 215, 231, 235, 239,

favor of or at the instance of the employer or one acting for or on behalf of the employer," it would have been careful to insert after the word "whoever" language making clear that the statute was aimed at the employer alone.[15]

240, 264, 303, 305, 307, 310, 316, 318, 319, 322, 325, 328, 330, 331, 332, 333, 337, 352, 355, 356, 421, 422, 426, 427, 428, 432, 482, 483, 484, 485, 486, 494, 495, 496, 499, and 517.

Congress has even inserted words of limitation where the very nature of the act proscribed made the limitation unnecessary. See, for example, 18 U. S. C. 77a ("Whoever not being an officer, agent, or employee of the United States shall falsely represent himself to be such officer, agent, or employee," etc.). One who "falsely" represents himself to be an officer, agent, or employee of the United States obviously is not one; and so the statute would have contained the same limitation on the word "whoever" had it read "Whoever falsely represents himself to be an officer, agent, or employee of the United States."

Cf. the above sections with the following sections containing no words of limitation: 18 U. S. C. 4, 7, 22, 23, 24, 25, 36, 52, 71, 72, 73, 74, 76, 78, 79, 80, 82, 83, 86, 87, 90, 91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 110, 111, 112, 113, 116, 117, 118, 119, 120, 121, 123, 126, 128, 129, 130, 131, 132, 134, 136, 144, 145, 146, 147, 177, 187, 200, 212, 232, 233, 234, 236, 237, 241, 241a, 243, 244, 245, 246, 247, 248, 249, 250, 251, 253, 254, 262, 263, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 281, 282, 283, 284, 285, 291, 302, 304, 306, 308, 312, 313, 314, 315, 317, 320, 321, 321a, 324, 338, 338a, 338b, 339, 345, 347, 348, 349, 349a, 353, 354, 357, 358, 381, 387, 390, 396, 396a, 408a, 408c–1, 408d, 409, 412a, 415, 416, 423, 424, 425, 430, 443, 444, 445, 446, 455, 456, 457, 458, 462, 463, 464, 465, 466, 467, 467a, 468, 470, 481, 487, 488, 489, 490, 491, 493, 498, 502–512, 520, 522 and 552.

[15] This precaution was particularly necessary in view of the breadth of the language subsequently employed in describing the action prohibited and because of the reference in Section 2 to employers. See discussion at pp. 24–27, *infra*.

Indeed, in the very field of legislation with which we are here concerned, labor legislation, Congress has demonstrated its awareness that such general language as "any person" is not apt terminology where the employer alone is intended to be covered. Thus, Section 15 (a) (3) of the Fair Labor Standards Act of 1938 (52 Stat. 1068; 29 U. S. C. 215 (a) (3)) provides that "it shall be unlawful for any person * * * to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee," and Section 16 (a) of the same Act (52 Stat. 1069; 29 U. S. C. 216 (a)) provides that "Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof" be subject to certain punishment. In contrast, however, Section 16 (b) (29 U. S. C. 216 (b)) visits certain civil liabilities upon "Any employer who violates the provisions of section 6 or section 7" of the Act. Interpreting Section 15 (a) and related provisions in the Fair Labor Standards Act, the same court which decided the instant case held, in a civil suit (*Bowe v. Judson C. Burns, Inc.*, 137 F. (2d) 37, 39 (C. C. A. 3)), that the words "any person" in that section, so far at least as the discrimination provi-

sion is concerned, are not confined to an employer.[16] And in *Meek* v. *United States*, 136 F. (2d) 679, 680 (C. C. A. 6), a later criminal proceeding under Section 16 (a) for violating Section 15 (a) (3), it was said, following the *Bowe* case, "as there pointed out, the differentiation between the prohibitions in other setcions of the Act directed to the 'employer,' and those here directed to 'any person' is significant of the intent of the Congress."

A parallel situation prevails under the "Kickback" Act. In its second section (footnote 1, *supra*, pp. 2–3), which was enacted expressly "to aid in the enforcement" of Section 1, the section here involved, the Secretaries of the Treasury and the Interior were authorized to make regulations for "contractors and subcontractors" on the building or work specified in Section 1, including a provision that "each contractor and subcontractor" should furnish a weekly affidavit with respect to the wages paid "each employee" during the preceding week. These provisions, of course, refer to employers.[17] While the majority in the court be-

[16] The court rejected a contrary interpretation by the district court (*Bowe* v. *Judson C. Burns, Inc.*, 46 F. Supp. 745, 749 (E. D. Pa.)).

[17] The purpose of the provision for submitting verified weekly pay rolls apparently was to provide a method of ascertaining readily the amount that employees are receiving or supposed to be receiving from their employer. A witness at a Senate subcommittee hearing who recommended the provision advanced as a reason for it self-protection of the employer. Hearings, Subcommittee of S. Committee on Commerce, S. Res. 74, 73d Cong., 2d sess., Vol. I, pp. 791, 794, 797.

low seemed to think that this reference in Section 2 to employers fortified its conclusion that Section 1 likewise was limited to employers (R. 244–245), we think it must be evident that the difference in language between the two sections makes for the opposite result—that Congress used the broader language of Section 1 intentionally.

The breadth of offender coverage in Section 1 epitomized by the use of the word "whoever," together with the specific limitation of Section 2 to employers by the use of the words "contractors and subcontractors," make it apparent that Section 1 should not be confined in application to a "kick-back" which benefits the employer pecuniarily unless that result is compelled by other language in Section 1. We find no such language.

The section penalizes, in the broadest possible terms, anyone who shall "induce" any person employed in federally financed construction or repair work "to give up any part of the compensation to which he is entitled under his contract of employment, *by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever.*" [Italics supplied.] Clearly this language does not suggest methods of exacting a "kick-back" which only an employer or one acting for him would be capable of using. Neither the employer nor his agent would normally use "force" to "induce" a "kick-back" from an employee. And an employer would certainly use a

"threat of dismissal" rather than a "threat of procuring dismissal" in attempting to secure a "kickback."[18] While an agent of an employer might utilize a "threat of procuring dismissal" if it was desired to conceal his representation of the employer, the phrase, of course, equally fits others than such an agent. Also, since an employer, it would seem, would ordinarily go through the motion, at least, of paying the employee the prescribed wage, in order to make it appear that he was complying with the statute, an employee would generally "give back" rather than "give up," a part of his compensation to the employer. And, certainly, there was no occasion to use such a sweeping phrase as the concluding one "by any other manner whatsoever," if Congress had intended to interdict only action by or on behalf of the employer.

In sum, it is only reasonable to suppose that had Congress intended in Section 1 to prohibit employer action merely, it would have used language more appropriately descriptive of that type of action, particularly in view of the breadth of the in-

[18] In *United States* v. *McGraw*, 47 F. Supp. 927, 928 (N. D. N. Y.), it was pointed out, in reaching a decision opposed to that of the majority below, that "the words 'by force' and 'procuring' lose their meaning" if Congress had intended to limit the section to employers. See also quotation at p. 43, footnote 54, *infra*, from the later decision of the same court in *United States* v. *Fuller*, decided September 7, 1943 (unreported officially, but copied in 6 Wage Hour Rep. 1090).

troductory word "whoever" and the contrasting limitation of Section 2 to employers.

In complete disregard of the sweep of the statutory language to which we have adverted, the majority below pins its decision, so far as the face of the statute is concerned, solely upon the words "contract of employment." Preliminarily, it states that it seems plain from a reading of the statute that the evil aimed at is the inducing of an employee engaged in work of the character specified, "to give up any part of the compensation to which he is entitled under his contract of employment." No one can, of course, quarrel with that, but the majority below then proceeds to give this language of the statute a twist in meaning not discernible from any ordinary reading of it by isolating the words "contract of employment" and then making this phrase the focal point of its ratiocination.[19] The "contract of employment" means, the majority says, the contract between the employer and the employee.[20] If this be so, as

[19] In *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 542, this Court pointed out that "to take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute."

[20] In this connection (R. 243-244) the majority cites *United States* v. *Golder*, 11 F. Supp. 870, 871 (E. D. Pa.) which defined "contract of employment" as meaning "the agreement between the contractor and the workman, not the contract between the contractor and the public body in charge of the work," a definition later adhered to by the same judge in

may be assumed *arguendo*, the court then reasons, apparently, that unless there has been an impairment, violation, or derogation of the employee's contractual right with respect to the wages he is entitled to receive, he has not been compelled, within the meaning of the statute, to "give up" any part of such wages. The one who is capable of breaching the contract right to the wages is, of course, the employer because he is the other party to the contract. *Ergo*, the statute as written nec-

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United States v. *Charlick*, 26 F. Supp. 203, 205 (E. D. Pa.), and followed in 19 Comp. Gen. 576, 577–578 (R. 237–240). In the *Golder* and *Charlick* cases the "Kick-back" Act was held inapplicable to the employer because the "contract of employment" between the employer and the workman, although calling for the payment of a lesser wage than that required by the contract with the Government, was adhered to. We believe that these decisions are not correct because they ignore the Congressional purpose to insure that the minimum wage intended for the workman gets to him. *United States* v. *Morley Construction Co.*, 98 F. (2d) 781, 788–789 (C. C. A. 2), certiorari denied *sub nom.*, *Maryland Casualty Co.* v. *United States*, 305 U. S. 651; *United States* v. *Fuller* (N. D. N. Y.) decided September 7, 1943 (unreported officially, but copied in 6 Wage Hour Rept. 1090). But, in any event, it is unnecessary here to determine whether the "contract of employment" may not embody the anterior agreements, where there are such, since in this case the employer paid its employees the precise wages which had been agreed upon in the subcontract and the earlier principal contract (see pp. 6–7, *supra*).

The *Charlick* and *Golder* decisions did not deal with the problem here presented, and, hence, as the dissenting judge below said (R. 249), are "not apposite the question *sub judice*." The Comptroller General's decision, also, concerned a different question.

essarily has application only to a situation where the employee gives up or cedes a portion of his contractual wage to the employer or for his benefit. It is necessary that the employer be enriched (R. 243–244).

Shortly stated, the difficulty with this argument is that it breathes into the statute a concept which is simply not there, namely, that the statute is concerned only with a breach of the contract of employment by the employer and merely adds criminal penalties for such breach. The statute clearly has a broader and not quite so legalistic an end in view, as is evident from its avowed purpose and sweeping terminology.

As is apparent from its title, a declared object of the "Kick-back" Act was "to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder * * *." At the time the "Kick-back" Act was passed (1934) there were two statutes, at least, which made provision for rates of pay on building construction and repair work financed in whole or in part by federal funds. One of these, the Davis-Bacon Act, enacted March 3, 1931 (c. 411, 46 Stat. 1494), provided, in its first section, for the inclusion, in every contract in excess of $5,000 for the construction or repair of public buildings of the United States or the District of Columbia, of a provision requiring the con-

tractor or any subcontractor to pay the mechanics and laborers as a minimum wage the "prevailing rate of wages" for similar work in the community in which the work is located.[21] The other statute, Title II of the National Industrial Recovery Act of June 16, 1933 (c. 90, 48 Stat. 195, 200 *et seq.*), designed to relieve unemployment and improve the standards of labor, made provision for a comprehensive program of public works to be carried out either directly by the Government or through loans and grants to states,

[21] This Act was amended on August 30, 1935 (c. 825, 49 Stat. 1011; 40 U. S. C. 276a–276a–5), after the enactment of the "Kick-back" Act, by making it applicable to contracts in excess of $2,000 instead of $5,000, and by requiring that the contract contain stipulations that the workmen are to be paid "directly upon the site of the work, unconditionally * * * and without subsequent deduction or rebate on any account," that the "prevailing wage" is to be paid "regardless of any contractual relationship" which may be alleged to exist between the contractor or subcontractor and his employees, that the scale of wages is to be posted in a prominent and easily accessible place at the site of the work, that the contract may be terminated by the Government if the required wage scale is not followed, and that there may be withheld from the contractor a sufficient portion of his accrued compensation to make good to the employees any deficiency in the amount received. In the event of the accrued payments withheld proving insufficient to make good any deficiency in the wages received by the employees the latter are expressly given a right of action against the contractor and his sureties, "and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds."

municipalities, or other public bodies, covering a certain percentage of the cost of labor and material. In Section 206 (48 Stat. 204–205; 40 U. S. C. 406) it was provided that "All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure * * * that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort * * *."[22]

Manifestly, the purpose of these statutes was to insure that the United States, in its proprietary capacity and in the exercise of its spending power, would not lend itself to any lowering of the living

[22] Pursuant to the authority contained in this Act (Section 209, 48 Stat. 206; 40 U. S. C. 409), an Executive Order (No. 6252) was issued by President Roosevelt on August 19, 1933, which, under the heading "Regulations," required that all wages paid for the construction authorized by the statute should be paid "in the full amount earned by each individual at the time of payment, not less often than once each week, and without deduction on account of goods purchased, rent, or other obligations, which obligations shall be subject to collection only by legal process"; that "Each contractor or subcontractor on any such project shall post in a prominent and easily accessible place at the site of the work a legible statement of all wage rates paid"; that "Should it appear that any individual employed on any such project has been or is being paid less than hereinbefore prescribed, the Administrator [Federal Emergency Administrator of Public Works] shall notify the employer of such individual to pay him all wages due according to the prescribed rate"; and that "Upon 10 days default on the part of such employer he shall be liable to the penalties provided in said Act for violation of these regulations."

standards of workingmen, and to provide instead that it set guideposts of employment.[23] They were born in a period of national economic distress and the *desiderata* were to effectuate a policy of spreading purchasing power among the lower income groups and to eradicate substandard wages from federally financed projects. It was vital to the success of this program "that the dollar which is intended for labor goes to that labor."[24] While the "Kick-back" Act was not limited in operation to the period of the depression, and applies to all contracts for construction and repair work financed in whole or in part by Government funds rather than merely to contracts executed pursuant to any particular construction program or for any certain amount, there can be no doubt that it was the Congressional design, in enacting it, to make it as certain as a criminal sanction can that intended recipients of wages made possible by the Government's money should have the full enjoyment and benefit of those wages; that no one should induce the workman to give up any part of the wages *qua* wages to which he is entitled under his contract of employment. The words of the statute "compensation to which he [the employee] is entitled under his contract of employment", have consequently no es-

[23] Cf. *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, 127.

[24] Hearings, Subcommittee of S. Committee on Commerce, S. Res. 74, 73d Cong., 2d sess., Vol. I, pp. 791–792.

[25] See 19 Comp. Gen. 576, 577–578 (R. 239–240).

teric meaning. Their purpose was merely to identify the money with which the statute is concerned, i. e., money paid as wages in connection with the performance of federal contracts for construction or repair work or in connection with other public construction made possible in whole or in part by grants or loans of federal funds. While the action which the statute interdicts must result in a diversion of compensation, as such, to which the employee is entitled by reason of his employment on a federally financed project, it is evident that a diversion of that type may be made as well by others as by an employer or one acting in his interest; and there is certainly nothing in the statute which indicates that the diversion must be by the latter or that it must result in the enrichment of the employer in contradistinction to others.

It is, we believe, unnecessary in this litigation to determine what may be the furthest reaches of a statute which is manifestly broad and sweeping.[26]

[26] For example, this case does not involve the validity of a union check off. However, a legitimate union check-off, the propriety of which is impliedly recognized in the provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, Secs. 8 (3), 9 (a), 49 Stat. 449, 452, 453; 29 U. S. C. 158 (c), 159 (a)) for the designation of exclusive collective bargaining representatives and authorizing closed-shop agreements with such representatives, would not, in our opinion, fall within the "Kick-back" Act, since it would constitute merely the collection by an otherwise lawful method of an assesment that the employee can validly be required to pay in any event as a condition of securing or retaining his employment; and the Secretary of Labor has so recognized

Certainly, to sustain the indictments in this case, the Government is not required to urge, as the majority below asserts (R. 246), that "the blackmailer, who, wholly unconnected with his victim's employment, requires and receives a part of the employee's wages each week for withholding knowledge of something which the latter desires to keep secret from his employer lest he lose his job, would be equally indictable." As was aptly pointed out by the dissenting judge (R. 249), the defendant in this case "was not a stranger in fact or in law to the contract of employment." He was the labor foreman of the subcontracting employer. His company placed him in complete charge of the stonemasons it employed, and he was vested with the plenary power of hiring and discharging them. So far as the workmen were concerned, he was "the boss." His connection with them, as the dissenting judge stated (R. 248), "was more direct and hence more influential than that of many a higher official of the * * * Company." It was by virtue of his relationship to the contract of

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by providing a procedure for securing authorization of a deduction that "is for the benefit of the employees or their labor organization through which they are represented and is provided for in a bona fide collective bargaining agreement." Section 2.5 (b) (2) (ii) of Regulations of Secretary of Labor (29 C. F. R.) as amended February 3, 1942 (7 Fed. Reg. 686, 688). In *Virginia Electric & Power Company v. National Labor Relations Board*, 319 U. S. 533, this Court impliedly recognized that a union not company-dominated may provide employees with a sufficient *quid pro quo* for the check-off.

employment that he was able to exact from the employees a portion of the wages to which they were entitled. His conduct was clearly within the language of the statute as well as the evil which it was designed to prevent. But the effect of the decision of the Circuit Court of Appeals is to exclude from the ambit of the statute not only respondent's conduct but analogous conduct by even the president or a director of a corporation acting for his own benefit. To give the statute such a construction is, to use again the language of the dissenting judge, "to emasculate needlessly an important criminal statute" (R. 248).

The rule of strict construction of penal statutes relied upon by the majority below does not require that such a statute "be strained and distorted in order to exclude conduct clearly intended to be within its scope."[27] While such statutes "may not by process of construction be extended beyond their reasonable and natural meaning, neither may they be, by the same process, deprived of their natural meaning."[28] The strict construction doctrine "does not require that the words of an enactment be given their narrowest meaning or that the lawmaker's evident intent be disregarded";[29] nor

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[27] *United States* v. *Raynor*, 302 U. S. 540, 552; *Fish Sheep Co.* v. *United States*, 252 U. S. 159, 170; *United States* v. *Corbett*, 215 U. S. 233, 242–243.

[28] *Spivey* v. *United States*, 103 F. (2d) 181, 185 (C. C. A. 5), certiorari denied, 310 U. S. 631.

[29] *United States* v. *Giles*, 300 U. S. 41, 48.

does it "require rejection of that sense of the words which best harmonizes with the context and the end in view."[30] Implied exemptions from a statute phrased in words of general application are not favored[31] and even express exemptions are often subject to a rule of strict construction.[32] The interpretation of the majority below adds to the statute a qualification which is not required by the plain meaning of its language, the manifest legislative intent, or constitutional considerations.[33] This the majority below was not permitted to do

[30] *Gooch* v. *United States*, 297 U. S. 124, 128.

[31] *Maxwell* v. *Moore*, 22 How. 185, 191 ("the rule is, that where the Legislature makes a plain provision, without making any exception, the courts of justice can make none, as it would be legislating to do so"); *United States* v. *City Nat. Bank of Duluth*, 31 F. Supp. 530, 535 (D. Minn.); *Garrison* v. *Sumners*, 223 Ala. 17, 18 (1931).

[32] See *Fleming* v. *Hawkeye Pearl Button Co.*, 113 F. (2d) 52, 56 (C. C. A. 8), relating to an exception in the Fair Labor Standards Act, which has an analogous end in view.

[33] Since the Government is not here urging the application of the statute to the conduct of one who was "wholly unconnected with his [victim's] employment," there is not here presented the constitutional problem which the Circuit Court of Appeals felt that such a construction might involve (R. 246). If, as we submit, the statute plainly covers conduct so closely related to the contract of employment as that of respondent, there can be no doubt that in its application to that conduct the statute is no more vulnerable to attack from a constitutional standpoint than in its application to analogous conduct by or on behalf of the employer, as to which, of course, the majority below had no constitutional doubts. The question here is simply one of determining the scope of the statute within an indisputably constitutional field.

It cannot be gainsaid that the construction contended for by the Government projects the legislation into fields which

"under the guise of construction because, as this court has so often held, where the words are plain there is no room for construction." [34]

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are or may be covered by state criminal law (although certainly not, however, to the extent the majority below assumes (R. 245–246)), but, of course, this is likewise true of the interpretation espoused by the majority below [cf., for example, the New York "Kick-back" statute (Laws 1934, c. 171) adopted at the same time as the Federal Act and for the purpose of combating the same evil. See *People* v. *Meyer*, 167 Misc. 287, 3 N. Y. S. (2d) 870 (City Magistrate's Court, Borough of Manhattan, 1938); *People* v. *Besowitz*, 166 Misc. 1, 2 N. Y. S. (2d) 87 (City Magistrate's Court, Borough of Manhattan, 1938)]. It was recognized, as the hearings before the Senate committees show, that the proposed legislation would overlap state law (Hearings before a Subcommittee of the Senate Committee on Commerce, pursuant to S. Res. 74, 73d Cong., 2d Sess., Vol. I, pp. 817–818; Hearings before a Subcommittee of the Senate Committee on Education and Labor, pursuant to S. Res. 228, 73d Cong. 2d Sess., pp. 23–24). But the majority does not assert that this duplication of offenses presents any constitutional problem in and of itself, as clearly it does not (*Jerome* v. *United States*, 318 U. S. 101, 105). It calls at most, as this Court pointed out in the *Jerome* case, for a nonextension of the duplicating federal statute beyond its clear terms, something which we do not urge.

[34] *Osaka Shosen Line* v. *United States*, 300 U. S. 98, 101; *Helvering* v. *City Bank Co.*, 296 U. S. 85, 89; *Caminetti* v. *United States*, 242 U. S. 470, 485, 490; *Mackenzie* v. *Hare*, 239 U. S. 299, 308; "It would transcend judicial power to insert limitations or conditions upon disputable considerations of reasons which impelled the law, or of conditions to which it might be conjectured it was addressed and intended to accommodate"; *Forrestal* v. *Commissioner of Internal Revenue*, 120 F. (2d) 223, 225 (C. C. A. 2).

The legislative history.—While we think there can be no doubt that the statute on its face embraces such conduct as that of the labor foreman involved in this case; this view is fortified, we submit, when consideration is given to the legislative history, reflecting the nature and extent of the evil that brought about the statute's enactment.[35] For a considerable period prior to the introduction of the bill which became the "Kick-back" Act there had been extended hearings before a subcommittee of the Senate Committee on Commerce, pursuant to S. Res. 74, 73d Cong., 2d sess.,[36] and hearings before a subcommittee of the Senate Committee on Education and Labor, pursuant to S. Res. 228, 73d Cong., 2d sess.,[37] were in progress at the time of the bill's enactment.[38] The testimony taken at these hearings reveals that responsibility for the "kick-back racket" was shared not only by em-

[35] In *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 543–544, this Court indicated that it could turn to any "available information for reaching a correct conclusion" as to the interpretation of a statute however clear the words of the statute might appear to be.

[36] "Authorizing an investigation of the matter of so-called 'rackets' with a view to their suppression."

[37] "Authorizing an investigation of the relationship existing between certain contractors and their employees in the United States."

[38] The hearings before this subcommittee continued after the passage of the "Kick-back" Act and resulted in the amendment of August 30, 1935, to the Davis-Bacon Act (see footnote 21, *supra*, p. 30). Unless otherwise stated, we refer in this brief only to what was brought out at those hearings prior to the enactment of the "Kick-back" law.

ployers but also by foremen acting independently and by others having no relation to the employer. One of the principal witnesses before the subcommittee of the Senate Committee on Commerce was Mr. George J. Atwell, president of the George J. Atwell Foundation Corporation. That his testimony was most influential is evidenced by the fact that it was he who suggested, for the purpose of furthering effective enforcement, the provision that became Section 2 of the "Kick-back" Act.[39] He stated that in order to make effective government policy in providing employment "we must see to it that the dollar which is intended for labor goes to that labor",[40]—that "Otherwise millions of dollars intended to reach the laborer will find its way into the pockets of the racketeers or dishonest or unfair contractors."[41] On the basis of his own company's experience he said that "Contractors themselves can help the situation if they are not themselves involved in the racket;"[42] that his own company included in every pay envelope a notice to the employees "not to pay any money to anyone to obtain or hold your job;"[43] that "In my case, on my job, I had a foreman for 10 years, and care-

[39] Hearings, Subcommittee of Senate Committee on Commerce, S. Res. 74, 73d Cong., 2d sess., Vol. I, pp. 791, 794–797. See also footnote 1, *supra*, pp. 2–3; footnote 17, *supra*, p. 24.

[40] *Ibid.*, 791–792.

[41] *Ibid.*, 791.

[42] *Ibid.*, 791.

[43] *Ibid.*, 790.

ful as I was about it, I found he was selling tickets to the men for shore dinners at $5 apiece. To get a job you had to buy a ticket. Then I found out that the shore dinner was never held. So that was another form of 'kick-back' ";[44] and that "The men have told me that they are forced to join social clubs where they must pay a very high rate of dues. That is another form of 'kick-back'."[45] Another witness, Mr. Adolph Dzik, an attorney for the Anti-racketeering Committee of the A. F. of L. Building Trades Unions of New York, testified to complaints from a number of labor unions that during the construction of the Roxy Theatre in New York plasterers' helpers received $8.50 a day (the prevailing union wage) in their pay envelopes but "were required to pay back a day or two after receiving their pay, to the labor foreman, the sum of $2.50 per day."[46] The then United States Attorney for the Eastern District of New York, Mr. Ameli, wrote to the subcommittee of instances "where certain superintendents or labor foremen exacted tribute from various men employed on the construction jobs, the threat being that if the money was not paid, they would lose their jobs."[47] The testimony before the subcommittee of the Senate Committee on Education and Labor likewise re-

[44] *Ibid.*, 790–791.
[45] *Ibid.*, 791.
[46] *Ibid.*, 801.
[47] *Ibid.*, 826.

veals instances of the participation of foremen in the "kick-back racket."[48]

While the committee reports on the "kick-back" bill were very brief and did not advert directly to "kick-back" practices on the part of foremen or others acting independently of the employer, the Senate Committee on the Judiciary, in reporting the bill favorably (R. 235), stated that "Hearings of the Senate Committee on Racketeering[49] revealed that large sums of money have been extracted from the pockets of American labor, to *enrich* contractors, subcontractors, *and their officials.*"[50] [Italics supplied.] In view of the evidence before the investigating committee that foremen were guilty of such abuses, it would seem clear that the Judiciary Committee's reference to "officials" was meant to include foremen as well as higher company executives. Furthermore, the word "enrich" in the report of the Committee clearly refers to "officials" individually, since they are not enriched if they merely act at the instance and on behalf of the employer. The report of the

[48] Hearings, Subcommittee of Senate Committee of Education and Labor, S. Res. 228, 73d Cong., 2d sess., pp. 5, 80–81, 152, 159. For further instances shown by testimony given at the same hearings though subsequent to the enactment of the "Kick-back" Act, see *ibid.*, 280–290, 333, 341–342, 428.

[49] Reference is undoubtedly to the hearings before the subcommittee of the Senate Committee on Commerce, which subcommittee had proceeded under a resolution authorizing investigation of so-called "rackets." (See p. 38, *supra.*)

[50] S. Rep. No. 803, 73d Cong., 2d sess. (R. 235).

Senate Committee, brief as it is, is therefore nevertheless sufficient to refute the conclusion of the court below that the Act was intended to apply only to cases where the employer is enriched by either his own action or action on his behalf. The report of the House Committee on the Judiciary (R. 236–237) referred only to "the so-called 'kick-back' racket by which a contractor on a Government project pays his laborers wages at the rate the Government requires him to pay them, but thereafter forces them to give back to him a part of the wages they have received,"[51] but in the brief debate on the floor of the House, Chairman Sumners of the House Judiciary Committee, in response to a direct inquiry,[52] stated that the bill was intended to apply to the abuses which had been disclosed by the Senate committee of which Senator Walsh was chairman (Subcommittee of the Senate Committee on Education and Labor).[53]

[51] H. Rep. No. 1750, 73d Cong., 2d sess. (R. 236).

[52] 78 Cong. Rec. 10759.

[53] If, despite what was said in the *American Trucking Associations* case (footnote 35, *supra*, p. 38), statements at Congressional hearings are ordinarily not appropriate legislative history (*R. F. C.* v. *Bankers Trust Co.*, 318 U. S. 163, 168, footnote 10), we submit that the testimony before the Senate subcommittees in this case should be considered in this case because of the reference to the testimony before the subcommittee of the Senate Committee on Commerce in the Senate Judiciary Committee report on the bill (*supra*, p. 41), and because of the reference to the testimony before the subcommittee of the Senate Committee on Education and Labor in the comment of Chairman Sumners of the House Judiciary Committee.

The legislative history of the Act thus shows, first, that the evil which led to its enactment was the "racket" whereby money supplied by the United States for construction and repair projects and intended for labor was in fact diverted from labor; second, that foremen acting independently and others unrelated to the victim's employer were participants in the "racket"; and third, that Congress had before it information as to the full extent of the evil at the time it provided, as a remedy, a penal statute sweeping in its terms and containing no limitation which can properly be construed as restricting it to action by or on behalf of the employer.[54]

[54] From its study of the legislative history, made after careful consideration of the decision of the majority below in the instant case, the District Court in *United States v. Fuller*, decided September 7, 1943 (unreported officially, but copied in 6 Wage Hour Rept. 1090), concluded (p. 1091): "A study of the history of the passage of the statute convinces me that even though much of the testimony and discussions had to do with "kick-back" to employers, the legislators were determined to stop the mulcting of public project workers by anyone using the means stated in the statute. The broader purpose is clearly expressed by the language of the law. The words 'anyone' in the title and 'whoever' in the text have such universally understood meanings that they are 'embodied in the maxim—*expressum facit cessare tacitum*.' A limitation of those words would not only make other words of the statute—such as 'force', 'intimidation' and 'procuring'—meaningless [. . . it would provide an easy device to circumvent a criminal statute. I must adhere to my former interpretation [in *United States v. McGraw*, 47 F. Supp. 927]."

CONCLUSION

For the reasons stated, it is respectfully submitted that the construction placed upon the statute by the majority below should be rejected; that the judgment of the Circuit Court of Appeals remanding the case to the District Court with directions to quash the indictments should be reversed; and that the case should be remanded to the Circuit Court of Appeals so that it may have the opportunity to consider other errors alleged to have occurred at the trial before it remands the case to the District Court for a new trial.[55]

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NOVEMBER 1943.

[55] See footnote 5, *supra*, p. 8.

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IN THE

Supreme Court of the United States

No. 1048. OCTOBER TERM, 1942.

UNITED STATES OF AMERICA,
Petitioner,

v.

FRANK LAUDANI.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE BRIEF IN OPPOSITION.

HAROLD SIMANDL,
In Behalf of Frank Laudani,
24 Branford Place,
Newark, New Jersey.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark, N. J.

IN THE

Supreme Court of the United States

No. 1048. October Term, 1942.

United States of America, Petitioner, v. Frank Laudani.	On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Motion for Extension of Time Within Which to File Brief in Opposition.

Comes now, Frank Laudani, by Harold Simandl, Esquire, counsel, and moves this Honorable Court that it extend the time within which he may file his brief in opposition to the petition from the 17th day of June, 1943 until the 22nd day of July, 1943 for the following reasons:

1. Frank Laudani was confined in St. Catherine's Hospital, 133 Bushwick Avenue, Borough of Brooklyn, City of New York, suffering from a serious heart ailment, and his physician, Dr. Vincent Anello has advised counsel against conferring with him at present, as such a conference may seriously retard his recovery.*

2. Counsel has not been formally engaged to appear in behalf of Frank Laudani in these proceedings, but in the

* Dr. Vincent Anello's affidavit is annexed.

emergency has undertaken at his own expense to acquaint this Honorable Court with the facts and circumstances, in order that the interests of FRANK LAUDANI may be properly preserved. Counsel did represent him before the Circuit Court of Appeals for the Third Circuit, and was not paid for his services. A very substantial balance of the costs incurred in printing that appeal remains unpaid.

3. Should FRANK LAUDANI engage counsel to act for him, additional information is required in order to determine whether counsel should apply in his behalf, for leave to proceed in *forma pauperis*.

4. The petition was served on May 28, 1943. Counsel acquainted the Solicitor General with the facts stated herein, and the Solicitor General has authorized counsel to state to this Honorable Court that he does not oppose this motion.

HAROLD SIMANDL,
In behalf of Frank Laudani.

Motion for Extension of Time Within Which to File Brief in Opposition.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

HAROLD SIMANDL, being duly sworn, says:

1. I have read the foregoing motion, and the same is true to the best of my knowledge, information, and belief. The reason why this verification is not made by FRANK LAUDANI, is that his physician, Dr. Vincent Anello, has advised me against conferring with him at present, as such a conference may seriously retard his recovery. The affidavit of Dr. Vincent Anello is annexed hereto. This application is made in good faith and not for the purpose of delay.

HAROLD SIMANDL.

Sworn to before me this 9th day of June, 1943.

MARTIN M. KURTZ,
An Attorney at Law of New Jersey.

Affidavit of Vincent Anello.

COUNTY OF KINGS,
STATE OF NEW YORK, } ss.:

VINCENT ANELLO, being duly sworn upon his oath according to law deposes and says:

1. I am a duly licensed physician, practicing in the State of New York for more than twenty (20) years. I have specialized in cardiac diseases and was called into consultation by DR. JOSEPH CALTA GIRONE, the family physician of MR. FRANK LAUDANI, the defendant in the above entitled action.

2. I have had MR. FRANK LAUDANI under treatment since May 21, 1943 at which time he was seized with a severe heart attack. He was hospitalized on May 23, 1943 by ambulance in St. Catherine's Hospital, 133 Bushwick Avenue, Borough of Brooklyn, City of New York. He is suffering from chronic rheumatic heart disease with a marked cardiac failure. There is a distinct mitral insufficiency murmur in his heart action. He has improved under treatment and on June 8, 1943 was permitted to leave the hospital for his home. He will have to be confined in bed for a period of at least four (4) weeks. Any emotional disturbance at this time would not only retard his recovery, but might prove so aggravating to the present condition as to be fatal. In my opinion any conference with his attorneys respecting the criminal case brought against him by the United States

would be a disturbing emotional factor sufficient to so retard his recovery.

3. In my opinion should MR. LAUDANI progress as at present, he should be able to confer with his attorney about the middle of July.

VINCENT ANELLO, M. D.

Sworn and subscribed to before me
this 10th day of June, 1943.

OSCAR BERNHEIM,
Notary Public.

Queens Co. Clk's No. 4199 Reg. No. 4692.
Kings Co. Clk's No. 347 Reg. No. 4508.
Commission Expires March 30th, 1944.

IN THE

Supreme Court of the United States

October Term, 1942

No. 1048

UNITED STATES OF AMERICA,

Petitioner,

v.

FRANK LAUDANI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF FRANK LAUDANI IN OPPOSITION

HAROLD SIMANDL,
Attorney for Frank Laudani,
24 Branford Place,
Newark, New Jersey.

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IN THE

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UNITED STATES OF AMERICA,

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Opinons Below

The majority (R. 367-374) and dissenting (R. 374-375) opinions in the Circuit Court of Appeals are not yet reported. The memorandum opinion of the District Court overruling respondents demurrer and motion to quash the indictments appears at (R. 37-42).

Jurisdiction

The judgment of the Circuit Court of Appeals was entered March 16, 1943 (R. 376), and a petition for rehearing (R. 379-390) was denied April 20, 1943 (R. 395). The

petition for a writ of certiorari was filed May 27th, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented

The Kick-back Act prohibits inducing any person employed on a public work financed by the United States, by force or threats, to give up any compensation to which he is entitled under his contract of employment. The question presented is whether this prohibition applies to Laudani, who was charged with acting solely in his own interest and not in behalf of his employer, and was not a party to the contract of employment of his alleged victims.

Statute Involved

Section 1 of the Act of June 13, 1934 (c. 492, 48 Stat. 948, 40 U. S. C. 276b), commonly called the Kick back Act, provides:

> "whoever shall induce any person employed in the construction prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

Statement

Respondent and one Alfredo Rossi, together with several others, were charged in a series of indictments with violations of the Kick-back Act of June 13, 1934 (R. 20-

26). Except for differences in names of the defendants and allegations, as to the names of victims, dates of the violations, and sums of money exacted, the counts of the indictments were couched in identical language (R. 21). They alleged that between January 1, 1937 and May 15, 1938, there was under construction at Weehawken, New Jersey certain public works known as the Weehauken Plaza connection of the Lincoln Tunnel under the Hudson River from New York to New Jersey; that the work was being constructed under a contract between the Port of New York Authority and George M. Brewster & Son, Inc., the general contractor, and a subcontract between the Brewster Company and the Cape Ann Granite Company for the furnishing and setting of granite rubble facing and coping necessary in the construction of the Weehauken Plaza connection; that all of this public work was being financed in part by grants from the United States; that respondent was foreman for the Cape Ann Granite Company, with authority to employ and discharge stone cutters and masons, and knew that the rate of pay for such employees, as fixed and posted on the work, was a certain amount per hour and that these employees were entitled to receive the full posted rate of pay without deductions for any purpose; and that respondent and his co-defendants, by intimidation and threats of dismissal and by giving to understand that all persons employed on the work would be required to give the defendants parts of their true wages so long as they were so employed, induced certain named employees to surrender to them parts of the compensation to which the employees were entitled for work and labor on the public work (R. 21-26, 38-39).

The defendants filed a demurrer (R. 26-31) and motion to quash (R. 32-36) the indictments on the ground, inter alia, that it was not alleged that they were the employers of the victims, or that they were acting in behalf of the

employer in inducing the victims to give up part of the compensation to which they were entitled. The demurrer and motion to quash were overruled (R. 37-42). This objection was renewed at the opening of the trial (R. 44-47), at the close of the Government's case (R. 207-208), and the conclusion of all the evidence (R. 273, 279), and in a motion in arrest of judgment (R. 319-320) and was in each instance overruled (R. 47, 208, 275, 280, 320).

The Government elected to proceed on five of the indictments and, after a severance as to the defendants other than respondent and Rossi, these indictments were consolidated for trial (R. 47-49). At the close of the trial the Government consented to the dismissal as to respondent of all three counts of indictment numbered 100, and seventeen of the counts of the remaining four indictments (R. 276-279, 316-317).

Nine counts were submitted to the jury, and respondent was convicted on each of these (R. 316-317, 332). The defendant Rossi was acquitted on the counts submitted as to him (R. 316-317). Respondent was sentenced to nine months' imprisonment on each count, the sentences to run concurrently (R. 333).

The evidence in support of the allegations of the counts on which respondent was convicted may be summarized as follows:

In 1926 the Port of New York Authority undertook to construct, as part of the Lincoln Tunnel project, certain installations at the New Jersey approach, and the United States, through the Public Works Administration, granted $4,780,000 to the authority to aid in financing these works (Ex. G. 5, R. 58; R. 75). Most of the cost of the enterprise was financed by the Authority. Contracts for portions of the works were let by the Authority to George M. Brewster & Son, Inc. (Ex. G. 6, R. 59; Ex. G. 7, R. 60), and the latter, in turn, sublet to the Cape Ann Granite

Company, Inc., contracts for furnishing and setting granite rubble facing and coping at the Weehauken, New Jersey, approach to the tunnel (Exs. G. 8, G. 9, R. 63). It is doubtful that any of the funds of the Public Works Administration were actually disbursed to the Cape Ann Granite Company, Inc. (R. 78, 81).

Laudani is married and has a family. He was well regarded in the community where he lived (R. 211, 212). He was not an officer, director or stockholder of the Cape Ann Granite Company (R. 234). He was employed as a foreman at $60 a week (R. 236) and was given authority to hire and discharge employees for and in behalf of that Company (R. 72). However, the officers of the Cape Ann Granite Company, together with its estimator were usually at the site of the work representing the Company (R. 328). The work commenced early in 1937 and ended May, 1938. The Cape Ann Granite Company were obliged to obtain union stone masons through three labor union Locals (R. p. 235, 236). Each Local had a business agent at the job to see to it that there was no infraction of union rules (R. 238, 239). One of them was Louis Mazzola, who was business agent of the Local to which Laudani belonged (R. 236). Although the Cape Ann Granite Company employed 100 workmen, there was no complaint by anyone until nine months after the work had been completed (R. 225, 244). During those nine months, Laudani had engaged in three heated election contests with Mazzola for offices in the Local (R. 245, 246, 248). The contests created bitterness between Mazzola, his followers and Laudani (R. 245, 246), and Mazzola swore revenge (R. 248).

The government's investigation commenced shortly after the last contest (R. 225-244). It was instigated and directed by Mazzola (R. 225, 229, 115, 252). The government's witnesses were adherents of Mazzola (R. 245, 249, 250). Only a few of the 100 workmen employed by the

Cape Ann Granite Company made charges. Only one of them (Tomasello) said Laudani asked him to rebate $.25 an hour (R. 134). The others said they conversed with Rossi or a fellow workman (not in the presence of Laudani), and thereafter paid to Rossi or the fellow workman, from 25 to 35 cents of their wages for each hour of their employment (R. 84, 123, 124, 142, 151, 152, 154, 156). In a few instances, they left the money at the foreman's shanty with Laudani (R. 91, 93, 94, 125, 126, 138, 142). Laudani vigorously denied the charges (R. 234, 265). He claimed the small sums which the workmen paid him were repayments of loans which he had made (R. 241, 253, 255). Rossi also denied the charges and corroborated him (R. 213 to 233). There was no evidence of the use of force or threats. The government established that the Cape Ann Granite Company and its officers knew nothing of these alleged activities, and did not authorize them (R. 72, 73, 242). The Court below reversed the convictions and remanded the cause with directions to quash the indictment (R. 374), on the ground that the prohibitions of the Kick-back Act apply only to the employer and persons acting for and on his behalf, and not to strangers to the employment contract who are acting in their own behalf (R. 370).

Circuit Court Judge Biggs agreed "* * * that the crime prohibited by the statute is the impairment or derogation of the employee's contractual right to the wages he is bound to receive under the contract" (R. 374), and that it * * * "was not intended to apply to instances of extortion unconnected with the contract of employment" (R. 375). His dissent is bottomed on his belief that "the defendant was in privity to the contract by representation * * *" (R. 374), and "* * * was not a stranger in fact or in law to the contract of employment" (R. 375). The Court below unanimously held (R. 373, 374) that the trial court committed reversible error in permitting the Prosecutor

to argue to the jury in effect that Laudani to establish his innocence, should have produced as witnesses, the remainder of the 100 employees of the Cape Ann Granite Company whom he was not charged to have subjected to extortion, so that they might testify that he had not exacted anything from them (R. 283, 285). The government does not contend that this holding was error.

Argument

1. An examination into the history of the statute discloses beyond doubt, that Congress never intended that it should apply to a situation so wholly local in nature, as is presented by this record. The statute resulted from hearings before a sub-committee of the Senate Committee on Commerce, pursuant to S. Res. 74 and 196 (73rd Cong.) and it was draughted and recommended by that body.[1]

The Senate Committee on Education and Labor pursuant to S. Res. 228 (73rd Cong. 2nd Sess.) merely held preliminary hearings on May 4th and 7th 1934, to determine whether conditions were such as to warrant an investigation—"of the relationship existing between certain contractors and their employees in the United States."[2]

The legislation in question had passed the Senate and was pending in the House at the time the preliminary hearings were held.

At the preliminary hearings, many representatives of organized labor appeared and gave testimony. What they said may be briefly summarized as follows: Dishonest contractors and sub-contractors who had been awarded

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[1] S. Report No. 1189 (75th Cong. 1st Sess.), pp. 4, 20.

[2] Hearings before sub-committee of the S. Committee on Education and Labor, Part 1, pp. 1, 2.

[3] Id. p. 3.

contracts to perform Federal public construction work (in the District of Columbia), were not paying the prevailing rate of wages to their employees, as required by their contracts. Contractors had gone to other parts of the country where the wage scale was lower and had induced cheap labor, both union and non-union, to come to the District. These workmen were offering their services at rates far below the prevailing wage scale in the District. Dishonest contractors were taking unfair advantage of the situation by employing these workmen at low rates and using all sorts of subterfuges to cloak their illegal operations. Those complaining sought a curb of such activities.[4]

After the preliminary hearings were completed, the sub committee was authorized to proceed and it did not commence to hold its hearings until June 21st, 1934, which was after the "kick-back" statute was enacted.[5]

Much of the testimony before that sub-committee, referred to by the government in its petition (Pet., p. 9), was offered after the statute became a law.[6]

Furthermore, in the incidents referred to in the petition, the foremen were apparently acting in concert with their employers.[7]

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[4] Id. pp. 2 to 161

[5] Id. pp. 1, 2

[6] The testimony referred to on Id. pp. 341-342, 333, 428, was given on June 22, 1934. The statute became a law on June 13, 1934.

[7] On Id. p. 341:

"That your affiant receives the sum of $1.50 per hour for an 8-hour day, but that your affiant, after saying the pay roll for the $1.50 rate per hour, is required to return to the foreman 50 cents per hour, and which sum your affiant is informed is returned to the general contractor."

And Id. p. 333:

"It was a 'kick-back' case where the contractor required the employees, or at least their superintendent for the contractor required their employees to refund 50 percent of their wages. They paid their men with a check for the correct amount, and after they had left the reservation, the men returned that check and received a different check for just half of what they should rightfully receive."

The record of proceedings before that sub-committee do not express a purpose by Congress to extend the statute in the manner contended for by the government.

The report of the sub-committee of the committee on Commerce pursuant to S. Res. No. 74 and 196 (73rd Cong.) discloses that this statute was first discussed on December 21, 1933 after George J. Atwell, President of the George J. Atwell Foundation Corp. had complained to the committee and had appeared and testified before it.[8]

The committee was obviously impressed by his testimony, and the views he expressed and the suggestions which he offered, are reflected in the text of the statute.[9]

It was his view that the "kick-back" was the fault of the contractor who bid so low for Federal work that he could not do it at the price without receiving a "kick-back" from the workmen.[10]

That practice put the honest contractor to a serious disadvantage. It was Mr. Atwell's suggestion that the government rid itself of such dishonest contractors and the way to accomplish it was to compel contractors to pay the prevailing rate of wages and stop them from obtaining a "kick-back" from the workmen.[11]

He suggested that every payroll should be certified and sworn to by the contractors.[12]

That suggestion is clearly embodied in the statute.[13]

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[8] S. Report No. 1189 (75th Cong. 1st Sess.) page 4—hearings before sub-committee of the S. Committee on Commerce (73rd Cong. 2nd. Sess.) Vol. I, part 5, page 789.

[9] S. Report No. 1189 (75th Cong. 1st Sess.) p. 20.

[10] Hearings before sub-committee of the S. Committee on Commerce (73rd Cong. 2nd Sess.) Vol. I, Part 5, p. 792.

[11] Id. pp. 793, 796.

[12] Id. p. 793.

[13] S. Report No. 1189 (75th Cong. 1st Sess.) pp. 20, 40. See Sec. 2 of the Act. 40 U. S. C. 276C.

Most of the testimony before the committee related to incidents basically similar to that charged in the indictment under consideration.[14] The government in its petition has set forth some of them (Pet., p. 9).

But the committee regarded such incidents as of a purely local nature and "*not within the jurisdiction of the Federal Government.*"[15] (Italics supplied.)

It defined "kick-back" as—"the nefarious practice of requiring the employee to give back to his employer a percentage of his earnings."[16]

The report of Mr. Sumners of the Committee on Judiciary in the House, contains the following:

> "This bill is aimed at the suppression of the so-called "kick-back racket" by which a contractor on a Government project pays his laborers wages at the rate the Government requires him to pay, but thereafter forces them to give back to him a part of the wages they have received" (R. 360).

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[14] S. Report No. 1189 (75th Cong. 1st Sess.) pp. 20 Hearings before sub-committee of the S. Committee on Commerce (73rd Cong. 2nd Sess.) Vol. I, Part 5, pp. 790 to 826.

[15] The Committee reported (page 20):

"After a thorough study of the testimony given and the complaints made, the committee concluded that the *majority of the cases presented were of a local nature and were not within the jurisdiction of the Federal Government.* But it was decided that the committee could effectuate the purpose of certain Federal statutes concerning rates of wages to be paid on work done under Government contracts. To this end a bill (S. 3041) was introduced during the Seventy-third Congress entitled 'A bill to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.' This bill passed both Houses and became Public Act No. 324. In accordance with the power conferred by this act, the Secretary of the Treasury and the Secretary of the Interior jointly promulgated a series of regulations effective January 15, 1935, which were to be incorporated in every Federal Government contract. This regulation required the filing of an affidavit sworn to by the person in charge of the pay rolls, attesting the pay roll and that no rebates or deductions were made, directly or indirectly." (Italics supplied.)

[16] S. Report No. 1189 (75th Cong. 1st Sess.) page 18.

The report of Mr. Stephens of the Committee on judiciary in the Senate, contains the following:

> "It has been a common practice for contractors constructing Federal buildings to pay the employees the prevailing rate as determined by the Secretary of Labor and then have them return a certain amount to the contractor. That is a most vicious practice" (R. 359).

The Court below was therefore clearly correct in holding:

> "The legislative history of the Act leaves little doubt that it was intended to penalize contractors who, enjoying federal work or work federally aided, unconscionably enrich themselves at the expense of their employees in denial of their contracts of employment" (R. 370).

And in holding:

> "But nowhere in the Act, its title, or its legislative history is it suggested that it was intended thereby to reach an extortioner or blackmailer (not privy to the contract of employment) merely because the persons upon whom such an offender preys receive their compensation as employees of a contractor doing public work financed in whole or in part by federal aid" (R. 371).

Since it was the intention to reach all those who aided and abetted the contractor, there is nothing in the use of the phrase "by threat of procuring dismissal from such employment"—which manifests a purpose to extend its terms in the manner the government suggests. Anyone intending to aid an employer in inducing an employee to give up a part of his compensation, may use as a means, a threat to procure the dismissal of such employee from his employment.

2. The government's contention ignores all of the applicable settled rules which govern the construction of

criminal statutes. Since the statute is highly penal, the Court below properly construed it strictly in favor of the accused,[17] and resolved every ambiguity and uncertainty about its meaning, in favor of his liberty.[18] Those who draughted the statute recognized the constitutional demarcation between State and Federal authority.[19] The Court below properly avoided a construction which might create constitutional doubts.[20] It correctly limited and controlled the literal import of the broad terms and phrases employed, in order to secure the object, which the act intended to reach.[21] The construction contended for by the government is contrary to the views of the majority as well as the minority, of the Court below.[22] It is contrary to the construction afforded by the Comptroller General (R. 361).

In reaching his decision to quash an indictment in a prosecution brought against certain employers charged with conspiring to violate the act in question, Judge Kirkpatrick in 1935, construed the act identically as did the

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[17] *United States* v. *Resnick*, 299 U. S. 207, 209, 210.

[18] *Ex parte Webb*, 225 U. S. 663, 689; *United States* v. *Novcek*, 271 U. S. 201, 204.

[19] S. Report No. 1189 (75th Cong. 1st Sess.) p. 20, Amendment X, United States Constitution; *United States* v. *Constantine*, 296 U. S. 287, 296; *United States* v. *Butler*, 297 U. S. 1, 68.

[20] *Linder* v. *United States*, 268 U. S. 5, 17.

[21] *United States* v. *Katz*, 271 U. S. 354, 362. *Church of Holy Trinity* v. *United States*, 143 U. S. 458.

[22] Judge Biggs said:

"I agree with the majority that the 'contract of employment' referred to in the statute is the contract of employment between the employer and the employee and that the crime prohibited by the statute is the impairment or derogation of the employee's contractual right to the wages he is bound to receive under the contract." * * * R. 374.

"* * * From the very terms of the statute it is obvious as the majority cogently point out that the section was not intended to apply to instances of extortion unconnected with the contract of employment." R. 375.

Court below.[23] The government did not appeal that decision nor did it appeal a subsequent decision by the same judge wherein he reiterated that view.[24]

This appears to be the first prosecution ever directed against a person, who was not an employer, or who was not charged with aiding or acting in concert with an employer and that fact seems to negative the suggestion that a question of large public importance is involved.

Conclusion

The Court below correctly repelled this belated, initial attempt to extend the operation of the statute, into a sphere, which Congress never intended to invade.

It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

July 23, 1943.

HAROLD SIMANDL,
Attorney for Frank Laudani.

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[23] *U. S. v. Golder, et al.*, D. C. E. D. Penna. 11 Fed. Supp. 870.

[24] *U. S. v. Charlick*, D. C. E. D. Penna. 26 Fed. Supp. 203.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 71

THE UNITED STATES OF AMERICA,

Petitioner,

v.

FRANK LAUDANI.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF

HAROLD SIMANDL,
Attorney for Frank Laudani, Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 71

THE UNITED STATES OF AMERICA,

Petitioner,

v.

FRANK LAUDANI.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF

Opinions Below

The majority (R. 241-248) and dissenting (R. 248-249) opinions in the Circuit Court of Appeals are reported in 134 F. (2d) 847. The memorandum opinion of the District Court overruling Respondent's demurrer and motion to quash the indictment appears at R. 25-29.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered March 16, 1943 (R. 250), and a petition for re-

hearing was denied April 20, 1943 (R. 251-252). The petition for a writ of certiorari was filed May 24, 1943, and granted October 11, 1943 (R. 252). The jurisdiction of this Court is conferred by Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Statute Involved

The Act of June 13, 1934 (c. 482, 48 Stat. 948, 40 U. S. C. 276b), commonly called the "Kick-Back" Act, provides:

1. That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit wit' respect to the wages paid each employee during the preceding week.

Question Presented

It is conceded by the Government that the judgment of the Circuit Court of Appeals in reversing the District Court should be affirmed (Government's Brief, p. 8; footnote 5, p. 13; footnote 9, p. 44). This Court must therefore determine whether the remand to the District Court should be

for the purpose of quashing the indictments or for a new trial. This involves the consideration of whether the prohibition of the "Kick-Back" Act applies to Laudani, who was charged with acting solely in his own interest and not in behalf of the contractor or subcontractor. He was not a party to the contract of employment of his alleged victims. No kick-back to or enrichment of the employer resulted.

Statement

Respondent and one Rossi, together with several others, were charged in a series of indictments with violations of the "Kick-Back" Act of June 13, 1934 (R. 14-18, 241-242). Except for differences in names of the defendants and in allegations as to the names of victims, dates of the violations, and sums of money exacted, the counts of the indictments were couched in identical language (R. 14, 25-26). They alleged that between January 1, 1937, and May 15, 1938, there was under construction at Weehawken, New Jersey, a certain public work known as the Weehawken Plaza connection of the Lincoln Tunnel under the Hudson River from New York to New Jersey; that the work was being done under a contract between the Port of New York Authority and George M. Brewster & Son, Inc., the general contractor, and a subcontract between the Brewster Company and the Cape Ann Granite Company, Inc., for the furnishing and setting of granite rubble facing and coping necessary in the construction of the Weehawken Plaza connection; that all of this public work was being financed in part by grants from the United States; that Respondent was foreman for the Cape Ann Granite Company, with authority to employ and discharge stonecutters and masons, and knew that the rate of pay for such employees, as fixed and posted on the work, was a certain amount per hour, and that these employees were entitled to receive the full posted rate of pay without deductions for any purpose;

and that Respondent and his co-defendants, by intimidation and threats of dismissal and by giving to understand that all persons employed on the work would be required to give the defendants part of their true wages so long as they were so employed, induced certain named employees to surrender to them parts of the compensation to which the employees were entitled for work and labor on the public work (R. 14-15, 26).

The defendants filed a demurrer (R. 19-22) and motion to quash (R. 22-25) the indictments on the ground, inter alia, that it was not alleged that they were the employers of the victims, or that they were acting on behalf of the employer in inducing the victims to give up part of the compensation to which they were entitled (R. 19, 20, 23). The demurrer and motion to quash were overruled by the Judge hearing them, in a written opinion (R. 25-29). This objection was renewed at the opening of the trial (R. 32, 33), at the close of the Government's case (R. 135), and at the conclusion of all the evidence (R. 179), and in a motion in arrest of judgment (R. 210), and was in each instance overruled.

The Government elected to proceed on five of the indictments and, after a severance as to the defendants other than Respondent and Rossi, these indictments were consolidated for trial (R. 14, 33). At the close of the trial the Government consented to the dismissal as to Respondent of all three counts of indictment numbered 10C, and seventeen of the counts of the remaining four indictments (R. 181, 182, 208).

Nine counts were submitted to the jury, and Respondent was convicted on each of these (R. 208). The defendant Rossi was acquitted on the counts submitted as to him (R. 208). Respondent was sentenced to nine months' imprisonment on each count, the sentences to run concurrently (R. 211).

The evidence in support of the allegations of the counts on which Respondent was convicted may be summarized as follows:

In 1926 the Port of New York Authority undertook to construct, as part of the Lincoln Tunnel project, certain installations at the New Jersey approach, and the United States, through the Public Works Administration, granted $4,780,000 to the Authority to aid in financing these works (Ex. G-5, R. 39). Most of the cost of the enterprise was financed by the Authority. Contracts for portions of the works were let by the Authority to George M. Brewster & Son, Inc. (Ex. G-6, R. 40; Ex. G-7, R. 40), and the latter, in turn, sublet to the Cape Ann Granite Company, Inc., contractors for furnishing and setting granite rubble facing and coping at the Weehawken, New Jersey, approach to the tunnel (Exs. G-8, G-9; R. 41, 42). It is doubtful that any of the funds of the Public Works Administration were actually disbursed to the Cape Ann Granite Company, Inc. (R. 53, 54).

Laudani is married and has a family. He was well regarded in the community where he lived (R. 138). He was not an officer director or stockholder of the Cape Ann Granite Company (R. 153). He was employed as a foreman at $60 a week (R. 154) and was given authority to hire and discharge employees for and in behalf of that company (R. 48). However, the officers of the Cape Ann Granite Company, together with its estimator, were usually at the site of the work, representing the company (R. 156). The work commenced early in 1937 and ended May, 1938. The Cape Ann Granite Company were obliged to obtain union stone masons through three labor union locals (R. 154). Each local had a business agent at the job to see to it that there was no infraction of union rules (R. 155). One of them was Louis Mazzola, who was business agent of the local to which Laudani belonged (R. 155). Although the Cape Ann Granite Company employed 100 workmen, there was no complaint by anyone until nine months after the work had been completed (R. 147, 160). During those nine months Laudani had engaged in three heated election contests with Mazzola for offices in the local (R. 160-164). The

contests created bitterness between Mazzola, his followers and Laudani (R. 160, 161), and Mazzola swore revenge (R. 162).

The Government's investigation commenced shortly after the last contest (R. 119-135). It was instigated and directed by Mazzola (R. 147). The Government's witnesses were adherents of Mazzola (R. 161-164). Only a few of the 100 workmen employed by the Cape Ann Granite Company made charges. Only one of them (Tomasello) said Laudani asked him to rebate 25 cents an hour (R. 88). The others said they conversed with Rossi or a fellow-workman (not in the presence of Laudani), and thereafter paid to Rossi or the fellow-workman from 25 to 35 cents of their wages for each hour of their employment (R. 56, 81, 93, 99, 107). In a few instances they left the money at the foreman's shanty with Laudani (R. 60, 62, 63, 82, 94). Laudani vigorously denied the charges (R. 159). He claimed the small sums which the workmen paid him were repayments of loans which he had made (R. 158, 168). Rossi also denied the charges and corroborated him (R. 139-153). There was no evidence of the use of force or threats. The Government established that the Cape Ann Granite Company and its officers knew nothing of these alleged activities and did not authorize them (R. 49).

ARGUMENT

The Construction of the "Kick-Back" Act By the Majority Below Is Supported By the Language of the Statute, the Legislative Intent and History

The Language of the Statute

The language of the "Kick-Back" Act unequivocally delineates the situation it seeks to remedy and punish. It is the inducement of an employee of a certain type "to give up any part of the compensation to which he is entitled under his contract of employment". The Government con-

cedes (Government's Brief, pp. 2, 33) that the "contract of employment" is the contract between the employer and the employee, and, of course, no other contract is or could be contemplated. This is the holding of *United States* v. *Golder et al.*, 11 F. Supp. 870, 871 (D. C., E. D. Pa.), as well as the majority and dissenting opinions of the Court below. It follows, therefore, that in the construction of this Act we must ascertain and describe the *conduct* that *could* invade or disturb this contract. In other words, we must circumscribe the statute so that the conduct denounced and the persons capable of violations are in clear relationship to the impairment, violation or derogation of the employee's contractual right to obtain the wages he is entitled to receive.

Only the employer is the other party to the "contract of employment" and only the employer provides the "compensation to which he is entitled under his contract of employment". Only the employer, therefore, or one acting for or on his behalf, is so situated, legally or otherwise, that he can come within the field of operations described or anticipated by the "Kick-Back" Act. The majority below (R. 243) aptly held:

> "From a reading of the statute it seems plain that the evil aimed at is the inducing of an employee, 'engaged in work of the character specified, 'to give up any part of the compensation to which he is entitled under his contract of employment.' The 'contract of employment' referred to of course means the contract between the employee and his employer. 'United States v. Golder et al., 11 F. Supp. 870; 871 (D. C., E. D. Pa.). Essential, therefore, to the crime as defined by the statute is the impairment, violation or derogation of the employee's contractual right with respect to the wages he is to receive. 'As the person capable of so offending, because of the requisite privity of contract, is the employer, the statute as written necessarily has application to a situation where the employee gives up or cedes a portion of his contractual wage to or in favor of or at the instance of the employer or one acting for or on behalf of the employer."

This construction finds support also in the use of the phrase "give up". Relating, as it does, to "compensation" and to the "contract of employment", these words "give up" must refer to the wages earned under the contract and must refer, further, to a giving up to the other party to the contract, namely, the employer. This is what is legally and factually contemplated in a "kick-back". Accordingly, it has been held that "give up" in this statute means "pay back", "return". *United States* v. *Charlick*, 26 F. Supp. 203 (D. C., E. D. Pa.). In this case, Judge Kirkpatrick stated, on page 205:

> "The offense at which it is aimed is; compelling workmen to return to their employers wages to which the contract between the employer and his employees entitles them."

In *United States* v. *Golder et al.*, 11 F. Supp. 870 (D. C., E. D. Pa.), the same Judge stated:

> "If the workman receives the whole amount of wages which the employer agreed to pay him when he went to work, and is not compelled to give back or to waive any part of it, the act has not been violated."

The same conclusion was reached by the Comptroller General in a decision (A. 90983) rendered to the Secretary of the Treasury on December 14, 1939 (19 Comp. Gen. 576; 577, 578). The statute therefore contemplates that the earnings have actually passed into the possession of the workman and before there can be any violation it must appear that the workman has paid back or kicked back some portion of his earnings to the employer or to one acting for or on behalf of the employer. According to the title, the statute sought "to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes". If the workman receives from his employer the full amount of the compensation contracted for, without any requir-

ment to give back any part of such compensation, how can it be said that he has been induced to give up that to which he is entitled under his contract of employment? The majority opinion below, in recognizing this, states:

> "So long, therefore, as the employer pays his employees the wages to which they are entitled under their contracts of employment and the employees are not induced or required to give back any part of their compensation, it cannot be said that they have been prevented from receiving the compensation to which their contracts of employment entitle them. What happens to the compensation after the employee has received it in full, and wholly without relation to or effect upon his contract of employment, is a matter with which this statute does not purport to deal."

Certainly no doubt that this is the proper construction of the statute can remain after examining Section 2 of this statute. Congress provided that "to aid in the enforcement of the above section", reasonable regulation should be made for "contractors or subcontractors", and that each "contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week". It is noteworthy that Section 2 of this statute, which is to assist in the enforcement of Section 1, is coextensive and consistent with the construction of Section 1 set forth herein. Section 2 would fall far short of aiding the enforcement of the statute as interpreted by the Government.

In construing this statute in accordance with the language and phraseology used it is important to bear in mind that this is a penal act which must be strictly construed in favor of the accused. Statutes which are penal in nature should not be interpreted to include situations or acts outside of the clear and explicit language of the statute.

> "Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used. United States v. Wiltberger, 5 Wheat. 76, 95, 5 L. Ed. 37, 42; Fasulo

v. United States, 272 U. S. 620, 628, 71 L. Ed. 443, 445, 47 S. Ct. 200. * * * Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses. United States v. Lacher, 134 U. S. 624, 628, 33 L. Ed. 1080, 1083, 10 S. Ct. 625; United States v. Chase, 135 U. S. 255, 261, 34 L. Ed. 117, 119, 10 S. Ct. 756; Fasulo v. United States, supra (272 U. S. 629, 71 L. Ed. 445, 47 S. Ct. 200)." *United States* v. *Resnick*, 299 U. S. 208-210.

"Statutes will not be read to create crimes, or new degrees or classes of crime, unless the purpose so to do is plain." *United States* v. *Noveck*, 271 U. S. 202, 204.

"'Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid,' (United States v. Brewer, 139 U. S. 278, 288) and that ambiguity and uncertainty about the meaning of a criminal statute ought to be resolved by a strict interpretation *in favor of the liberty of the citizen.*" *Ex Parte Charley Webb*, 225 U. S. 663, 689. (Emphasis supplied.)

The Government in its brief (pp. 14, 15, 20, 21, 22, 23, 24, 25, 26) seeks to make much of the use of the word "whoever" and cites various statutes wherein that word or similar words have been construed generally. No doubt there are various statutes in which Congress intended "whoever" to be without limitation, and the courts have determined such intention by interpreting the legislative history of the statute and by construing the context of the language. However, it is equally true that many statutes using the word "whoever" or words of similar import have been construed to be limited in their application by the same process of interpretation and construction.

In *United States* v. *Katz*, 271 U. S. 354, 362, this Court said:

"General terms descriptive of a class of persons made subject to a criminal statute may and should be limited where the literal application of the statute would lead

to extreme or absurd results, and where the legislative purpose gathered from the whole Act would be satisfied by a more limited interpretation.".

In that case, the defendant was indicted for a conspiracy to violate a law of the United States which provided, "No person shall * * * sell any liquor without making at the time, a permanent record thereof * * *". This Court held that the statute did not apply to one who unlawfully sold liquor and kept no record.

In the case of *Church of the Holy Trinity* v. *United States*, 143 U. S. 458, the church made a contract with a minister (an alien residing in England) to come to the City of New York and enter into its service as a rector and pastor. In pursuance of such contract, the minister removed to the United States and entered upon such service. The act which the church was charged with violating was as follows:

> "* * * it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien into the United States, under contract or agreement made previous to the importation of such alien * * * to perform labor or service of any kind in the United States."

This Court quoted (p. 460):

> "* * * The language of the act, if construed literally, evidently leads to an absurd result. If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity. The court must restrain the words. The object designed to be reached by the act must limit and control the literal import of the terms and phrases employed.'"

In the recent case of *Arnold* v. *United States* (C. C. A. 8), 115 F. (2d) 523, the Court construed the following criminal statute:

> "whoever shall knowingly ship or cause to be shipped from one State * * * into any other State * * * any

package of or package containing spirituous * * * liquors * * * unless such package be so labeled on the outside cover as to plainly show the name of the consignee * * * shall be fined, etc. * * *."

The Court held that the statute did not include private carriers, but that it applied solely to common carriers. It is plain that the literal terms of the statute were broad enough to include any person who shipped. But the Court was mindful of the fact that it was considering a highly penal statute, and in construing it kept in mind throughout what it conceived was the true intention of Congress.

Compare: *United States* v. *Jim Fuey Moy*, 241 U. S. 395; *Taylor* v. *United States*, 207 U. S. 120; *United States* v. *Laws*, 163 U. S. 258; *United States* v. *Kirby*, 74 U. S. 482, 486; *Baltzell* v. *Mitchell*, 3 F. (2d) 428, 430; *United States* v. *Ditorio*, 8 F. (2d) 279, 280; *United States* v. *Baltimore Post Co.*, 2 F. (2d) 761, 763; *Gregg* v. *United States*, 116 F. (2d) 609; *Austin* v. *State*, 53 N. E. 481; *United States* v. *Palmer*, 7 Wheat. 610, 631; *United States* v. *Walter*, 263 U. S. 17; *The Abb Dodge*, 233 U. S. 166, 172; *Texas* v. *Eastern Texas R. Co.*, 258 U. S. 204, 217; *National Labor Relations Board* v. *Jones and Laughlin*, 301 U. S. 1, 29; *United States* v. *American Trucking Co.*, 310 U. S. 534.

The above decisions clearly show that the meaning of the word "whoever" depends upon a sensible construction of the statute and the legislative intent. The Government, by isolating the word "whoever" from the statute and seeking its meaning, so isolated, merely begs the question to be decided.

The Government in its brief also discusses at length (pp. 16, 29, 30, 31) the Davis-Bacon Act of March 3, 1931 (c. 411, 46 Stat. 1494; 40 U. S. C., Sec. 276a et seq.) and Title II of the National Industrial Recovery Act of June 16, 1933 (c. 92, 48 Stat. 195; 40 U. S. C., par. 401 et seq.).

The Government *assumes* that Congress had these two Acts in mind when it passed the "Kick-Back" Act. Even though this assumption be accepted, we fail to see how it

aids the construction for which the Government contends. On the contrary, an examination of the Davis-Bacon Act and the provisions of the N. I. R. A. referred to shows a careful and studied effort by Congress to control the payment of *wages by contractors and subcontractors*. Almost every section of these statutes is limited to "contractors and subcontractors". Section 204 of Title II, June 16, 1933, c. 90; 48 Stat. 203 (40 U. S. C., Sec. 404 (c)), not referred to in the Government's brief, provides, in part:

> "all contracts involving the expenditure of such grants shall contain provisions establishing minimum rates of wages, to be determined by the State Highway Department, which contractors shall pay to skilled and unskilled labor * * *."

No one can deny that Congress, in lending money for construction projects, may exact certain agreements and apply certain conditions binding upon those to whom Government money is given. This is the *rationale* of the labor and wage provisions above referred to. The conclusion is irresistible that the "Kick-Back" Act intended to punish criminally those contractors and subcontractors who violated the conditions and agreements which were part and parcel of the federal funds given to them. Only contractors and subcontractors are sufficiently privy to the limitations on the use of federal funds to be in a position to defraud or deceive the Treasury of the United States or the agency disbursing such funds.

The Legislative Intent and History

An examination into the history of the statute discloses beyond doubt, that Congress never intended that it should apply to a situation so wholly local in nature, as is presented by this record. The statute resulted from hearings before a sub-committee of the Senate Committee on Con-

merce, pursuant to S. Res. 74 and 196 (73rd Cong.) and it was drafted and recommended by that body.[1]

The Senate Committee on Education and Labor pursuant to S. Res. 228 (73rd Cong. 2nd Sess.) merely held preliminary hearings on May 4 and 7, 1934, to determine whether conditions were such as to warrant an investigation "of the relationship existing between certain contractors and their employees in the United States."[2]

The legislation in question had passed the Senate and was pending in the House at the time the preliminary hearings were held.[3]

At the preliminary hearings, many representatives of organized labor appeared and gave testimony. What they said may be briefly summarized as follows: Dishonest contractors and subcontractors who had been awarded contracts to perform Federal public construction work (in the District of Columbia), were not paying the prevailing rate of wages to their employees, as required by their contracts. Contractors had gone to other parts of the country where the wage scale was lower and had induced cheap labor, both union and non-union, to come to the District. These workmen were offering their services at rates far below the prevailing wage scale in the District. Dishonest contractors were taking unfair advantage of the situation by employing these workmen at low rates and using all sorts of subterfuges to cloak their illegal operations. Those complaining sought a curb of such activities.[4]

After the preliminary hearings were completed, the subcommittee was authorized to proceed and it did not commence to hold its hearings until June 21, 1934, which was after the "kick-back" statute was enacted.[5]

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[1] S. Report No. 1189 (75th Cong. 1st Sess.), pp. 4, 20.

[2] Hearings before sub-committee of the S. Committee on Education and Labor, Part 1, pp. 1, 2.

[3] Id. p. 3.

[4] Id. pp. 2 to 161.

[5] Id. pp. 1, 2.

The record of proceedings before that sub-committee do not express a purpose by Congress to extend the statute in the manner contended for by the Government.

The report of the sub-committee of the Committee on Commerce pursuant to S. Res. No. 74 and 196 (73rd Cong.) discloses that this statute was first discussed on December 21, 1933; after George J. Atwell, president of the George J. Atwell Foundation Corp. had complained to the committee and had appeared and testified before it.[6]

The committee was obviously impressed by his testimony, and the views he expressed and the suggestions which he offered, are reflected in the text of the statute.[7]

It was his view that the "kick-back" was the fault of the contractor who bid so low for Federal work that he could not do it at the price without receiving a "kick-back" from the workmen.[8]

That practice put the honest contractor to a serious disadvantage. It was Mr. Atwell's suggestion that the Government rid itself of such dishonest contractors by compelling them to pay the prevailing rate of wages and stop them from obtaining a "kick-back" from the workmen.[9]

He suggested that every payroll should be certified and sworn to by the contractors.[10]

That suggestion is clearly embodied in the statute.[11]

Most of the testimony before the committee related to incidents basically similar to those charged in the indictment under consideration.[12]

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[6] S. Report No. 1189 (75th Cong., 1st Sess.) p. 4—hearings before sub-committee of the S. Committee on Commerce (73rd Cong., 2nd Sess.) Vol. 1; part 5, p. 789.

[7] S. Report No. 1189 (75th Cong., 1st Sess.) p. 20.

[8] Hearings before sub-committee of the S. Committee on Commerce (73rd Cong., 2nd Sess.) Vol. 1, Part 5, p. 792.

[9] Id., pp. 793, 796.

[10] Id., p. 793.

[11] S. Report No. 1189 (75th Cong., 1st Sess.) pp. 20, 46. See Sec. 2 of the Act, 40 U. S. C. 276C.

[12] Report No. 1189 (75th Cong., 1st Sess.), p. 20 Hearings before sub-committee of the S. Committee on Commerce (73rd Cong., 2nd Sess.), Vol. 1, Part 5, pp. 790-826.

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The report of Mr. Sumners of the Committee on Judiciary in the House contains the following:

"This bill is aimed at the suppression of the so-called 'kick-back racket' by which a contractor on a Government project pays his laborers wages at the rate the Government requires him to pay, but thereafter forces them to give back to him a part of the wages they have received" (R. 236).

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[13] The Committee reported (p. 20):

"After a thorough study of the testimony given and the complaints made, *the committee concluded that the majority of the cases presented were of a local nature and were not within the jurisdiction of the Federal Government.* But it was decided that the committee could effectuate the purpose of certain Federal statutes concerning rates of wages to be paid on work done under Government contracts. To this end a bill (S. 3041) was introduced during the Seventy-third Congress entitled 'A bill to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.' This bill passed both Houses, and became Public Act No. 324. In accordance with the power conferred by this act, the Secretary of the Treasury and the Secretary of the Interior jointly promulgated a series of regulations, effective January 15, 1935, which were to be incorporated in every Federal Government contract. This regulation required the filing of an affidavit sworn to by the person in charge of the pay rolls, attesting the pay roll and that no rebates or deductions were made, directly or indirectly." (Italics supplied.)

[14] S. Report No. 1189 (75th Cong., 1st Sess.) p. 18.

scionably enrich themselves at the expense of their employees in denial of their contracts of employment" (R. 244).

And in holding:

"But nowhere in the Act, its title, or its legislative history is it suggested that it was intended thereby to reach an extortioner or blackmailer (not privy to the contract of employment) merely because the persons upon whom such an offender preys receive their compensation as employees of a contractor doing public work financed in whole or in part by federal aid" (R. 245).

The Construction Urged by the Government Should Be Rejected Because Its Limitless Application Would Reduce the Statute to An Absurdity; Such a Statute Would Be Unconstitutional and Would Be So Vague and Uncertain As To Be Unenforceable

We believe that the apparent absurdity and inefficacy of a construction of the "Kick-Back" Act as urged by the Government furnishes one of the most cogent and sound arguments for the construction urged by this Respondent. A breakdown of the Government's analysis of the statute shows the following: "whoever" is urged by the Government to mean "any person" without limitation (Government's Brief, pp. 14, 20). The "contract of employment" is held to have no esoteric meaning and is used merely to identify the money (Government's Brief, p. 33). "Give up" does not mean "kick-back" or a return of the money (Government's Brief, p. 26), and the phrase "by force, intimidation, threat or procuring dismissal from such employment or by any other manner whatsoever", is not limited to acts or conduct relating to a "kick-back", but is broad enough to encompass any act or conduct of anyone.

By rewriting and rephrasing the statute in accordance with these analyses and contentions, we have

> "any person, whether connected with the victim's employment or not who shall, by any manner whatsoever, induce a person employed in the construction (of projects wholly or partly financed by Federal funds) to give up any part of the compensation to which he is entitled, shall be fined not more than Five Thousand ($5000) Dollars or imprisoned not more than five years, or both."

We submit that such a statute compels the following criticisms: The statute will be practically without limitation and reduced to an absurdity; the statute would be unconstitutional; and finally it would be so vague and indefinite as to be unenforceable.

Reductio ad Absurdum

The absurdity of the Government's contention is clearly recognized by the majority opinion below (R. 245):

> "But nowhere in the Act, its title, or its legislative history is it suggested that it was intended thereby to reach an extortioner or blackmailer (not privy to the contract of employment) merely because the persons upon whom such an offender preys receive their compensation as employees of a contractor doing public work financed in whole or in part by federal aid. Nor would a court be justified in so extending the statute."

The illustrations could be multiplied indefinitely. Congress never intended that the legislation in question should apply to the bandit who, by force, steals from the workman; the landlord, who coerces to get his rent; or the union official who intimidates a workman in order to collect dues that he may owe to a union. Nor could it apply to a shopkeeper or vendor who fraudulently misrepresents the goods sold to the workman. Such individuals are in a legal sense, strangers to the Government, as well as the workman. They have no contract with the Federal Government and therefore, have not submitted themselves to its control.

They have no contract with the workmen and are, legally, strangers to them. If the phrase "or by any other manner whatsoever", as the Government contends, is not limited to illegal or unlawful means, the applicable illustrations continue ad infinitum invading almost every type of human conduct, legal or illegal. In this fashion the "Kick-Back" Act would apply to all who sell merchandise to a person employed on a Government financed project and agree to accept payment weekly out of the employee's salary, or to a vendor who takes an assignment of wages from such employee, or to a finance company, or to a bill collector or to a collection company. Is this the scope of the "Kick-Back" Act intended by Congress? Is this a construction of the statute reasonably in accord with its manifest purposes? Is this a strict construction in favor of the accused?

Unconstitutionality

Before amplifying this criticism of the Government's construction of the statute, we must call attention to an inconsistency in the Government's Brief. In footnote 33, page 36, it is stated:

> "Since the Government is not here urging the application of the statute to the conduct of one who was 'wholly unconnected with his (victims) employment,' there is not here presented the constitutional problem which the Circuit Court of Appeals felt that such a construction might involve" (R. 246).

We fail to understand how the Government can suddenly inject this statement in its brief, in view of the many pages presented, directly to the contrary. The fact is that the Government contends that the "Kick-Back" Act applies without limitation. This is irrefutably shown by the references to the brief stated above wherein the Government sought to construe "whoever", "contract of employment", "give up", and the phrase relating to "force, intimidation, etc.". Throughout the brief the Government has argued that the statute "does not suggest methods which only an

employer, or one acting on his behalf, would be capable of using" (p. 15). That, "as is evident from its sweeping terminology and avowed purposes, the statute had a broader and not quite so technical an end in view" (p. 15). That the purpose of the Act is that the workman "should have the full enjoyment and benefit of those wages" (p. 16). That the statute is broad with sweeping terminology (p. 29). Repetition of these phrases will be found throughout Government's brief.

The only explanation that we can diagnose for the amazing statement in footnote 33, page 36, is that the Government belatedly realized that its own construction of the "Kick-Back" Act left the door wide open to the finding of unconstitutionality. The Government realized at the outset that a broad construction would have to be adopted to hold the Respondent, and it ingeniously hit upon the broad and limitless evil of "lowering of the living standards of working men" (p. 32); thereafter with blind enthusiasm and for many pages, the Government pursued its course, eliminating practically all limitations to the operation of the statute, and making it applicable to everybody and everyone (contrary, as we shall show later to both the majority and dissenting opinions of the Court below).

The first dampening of the Government's enthusiasm came with the recollection of the "check off" system. The mental process is clear. The Government couldn't admit that a "check off" violated the "Kick-Back" Act and yet a "check off" clearly was contrary to the construction which it urged. The Government had to explain away this anomoly. The purported explanation is found in the Government's brief, footnote 26, pages 33, 34. The weakness of the explanation is apparent on reading this footnote. In the first place, the Government says, "in our opinion" a "check off" would not fall within the "Kick-Back" Act. Certainly it can as plausibly be said or argued that a "check off" is illegal and criminal as violative of this statute (and especially so where a union forces the employee to

agree to the "check off" as a condition to remaining employed). Secondly, the Government states in effect that a "check off" would be an exception to the statute. This bold statement and nothing more is a clear example of sophistic reasoning. The Government reasons that the statute should be construed in a certain manner and then starts recognizing exceptions to its own reasoning. Isn't it more logical to say that Congress must have been aware of its own legislation and policy permitting "check offs", and that the statute should therefore be construed in recognition thereof?

Almost at the time the end of the brief was reached and in footnote 33, page 36, the Government's enthusiasm (for its broad and sweeping construction) had changed completely to fear—fear of the constitutionality of the statute if construed accordingly.

This fear is recognized by the majority opinion below (R. 246):

> "Under the construction of the statute, here involved, which the government necessarily urges in an effort to sustain the indictments, the blackmailer, who, wholly unconnected with his victim's employment, requires and receives a part of the employee's wages each week for withholding knowledge of something which the latter desires to keep secret from his employer lest he lose his job, would be equally indictable. Clearly, the statute was not so intended. Furthermore, any such extension of its scope suggests the possible invasion of the field of private rights and wrongs, unrelated to any federal interest or concern, which Congress is without constitutional warrant to enter upon. 'The regulation of the conduct of its own citizens belongs to the State, not to the United States.' United States v. Constantine, 296 U. S. 287, 296."

This fear of unconstitutionality is likewise justified by the decisions.

> "* * * an act committed within a State, whether for a good or a bad purpose, or whether with an honest

or a criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. An act not having any such relation is one in respect to which the State can alone legislate." *United States* v. *Fox*, 95 U. S. 670, 672.

"In this view the statute is a clear invasion of the police power, inherent in the States, reserved from the grant of powers to the federal government by the Constitution * * *.

* * * The affirmation of such a proposition would obliterate the distinction between the delegated powers of the federal government and those reserved to the States and to their citizens. The implications from a decision sustaining such an imposition would be startling. The concession of such a power would open the door to unlimited regulation of matters of State concern by federal authority. The regulation of the conduct of its own citizens belongs to the State, not to the United States. The right to impose sanctions for violations of the State's laws inheres in the body of its citizens speaking through their representatives." *United States* v. *Constantine*, 296 U. S. 287, 296.

"There is, of course, no constitutional power in Congress to prohibit or to punish assaults committed in the territorial limits of the state of South Carolina, unless they in some way interfere with the operations of the federal government." *Bray* v. *United States*, 289 Fed. 329, 332.

To the same effect, *United States* v. *Doremus*, 249 U. S. 86, 93, 95; *United States* v. *Butler*, 297 U. S. 1, 68; *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, 79 L. Ed. 1570, 55 S. Ct. 837, 97 A. L. R. 947.

The state, through the exercise of its police power, has the exclusive duty and power to protect its local workmen from the depredations of those who through fraud, oppression, coercion, or other wrongful act seek to take unfair advantage of them. On what constitutional ground can certain workmen be singled out as entitled to federal pro-

tection, simply because their employer is engaged in working on a purely local project which is partly dependent upon federal grant? What constitutional sanction recognizes that threats of extortioners and blackmailers are greater or different with relation to such employees as distinguished from all employees? What reasonable relation is there between this statute and extortion from a workman merely because he exerts his labors on a local project partially financed by federal funds? The majority opinion below states (R. 245):

> "Equally reprehensible though it is for one not the employer to exact tribute from a workman upon threat of disturbing him in his employment, no greater need for federal protection of workers against the threats of extortioners or blackmailers in general is indicated simply because their employer happens to derive all or a part of his income from work dependent upon federal loans or grants. All other workers merit no less consideration. But extortion or blackmail visited upon private persons in respect of their private rights or property are offenses which, under our federal system, have been left to the criminal administration of the states."

Nor can the construction urged by the Government find constitutional sanction in the theory that the project (financed in whole or in part by federal funds) is within the jurisdiction of the United States. Article IV, Section 3, clause 2, of the United States Constitution gives Congress power to make all needful rules and regulations respecting the territory or other property belonging to the United States. The statute (18 U. S. C. Sec. 451) affords federal jurisdiction over crimes committed within or on any lands reserved or acquired for the exclusive use of the United States and under its exclusive jurisdiction or any place purchased or otherwise acquired by the United States by the consent of the legislature of the state for the erection of a fort, magazine, etc.

This statute cannot help the Government in its contention because it is now settled beyond question that the United States must have been given exclusive jurisdiction and possession of the property in question and further that the state legislature must have granted Congress criminal jurisdiction thereof. *Bowen* v. *Johnston*, 306 U. S. 19; *United States* v. *Bevans*, 3 Wheat., 336; *United States* v. *McGowan*, 302 U. S. 535; *United States* v. *Bowman*, 260 U. S. 94.

It must not be overlooked, that the project upon which the workmen were employed was not a federal project, but a purely State project undertaken by a State agency. The workmen were not Government employees or officials. They were the private employees of a private domestic contractor. It is extremely doubtful that any part of the federal grant was actually disbursed to the employees or their employer (R. 53, 54).

In light of the authorities heretofore cited, we believe, that if the construction urged by the Government were adopted, the statute would be unconstitutional. Certainly, the most that can be favorably said, even affording the benefit of every reasonable doubt, is, that there still remains grave doubt on that score.

In *Linder* v. *U. S.*, 268 U. S. 5, this Court states on pages 17, 18:

> "Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not intrusted to the Federal government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within power reserved to the states, is invalid, and cannot be enforced. McCulloch v. Maryland, 4 Wheat. 316, 423, 4 L. ed. 579, 605; License Tax Cases, 5 Wall. 462, 18 L. ed. 497; United States v. Dewitt, 9 Wall.

41, 19 L. ed. 593; Keller v. United States, 213 U. S., 138, 53 L. ed. 737, 29 Sup. Ct. Rep. 470, 16 Ann. Cas. 1066; Hammer v. Dagenhart, 247 U. S. 251, 62 L. ed. 1101, 3 A. L. R. 649, 38 Sup. Ct. Rep. 529, Ann. Cas. 1918E, 724; Child Labor Tax Case, 259 U. S. 20, 66 L. ed. 817, 21, A. L. R. 1432, 42 Sup. Ct. Rep. 449. In the light of these principles and not forgetting the familiar rule, that *'a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score'*, the provisions of this statute must be interpreted and applied." (Italics ours.)

To the same effect see *Cohens* v. *State of Virginia*, 6 Wheat. 264, in which the Court held that an act of Congress would not be construed so as to imply an intention of interfering with the penal laws of a state unless the provisions of an act are such as to render the construction inevitable.

Vagueness and Uncertainty

The construction urged by the Government would leave the statute so vague and uncertain that it would be ineffectual and unenforceable. The Government has refused to recognize that the doctrine of *ejusdem generis* applies to the expression "or by any other manner whatsoever". We have also demonstrated the Government's construction of the word "whoever", as well as the other language in the statute. In *Connally* v. *General Construction Co.*, 269 U. S. 385, the Court states on page 391:

> "That the terms of a penal statute creating a new offence must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

In *Lanzetta* v. *New Jersey*, 306 U. S. 451, this Court held on page 453:

> "No one may be required at peril of life, liberty, or property, to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the statute commands or forbids."

To the same effect are, *Champlin Rfg. Co.* v. *Commission*, 286 U. S. 210, 242, 243; *Cline* v. *Frink Dairy Co.*, 274 U. S. 445, 458; *Small Co.* v. *American Sugar Rfg. Co.*, 267 U. S. 233, 239; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 89; *Collins* v. *Kentucky*, 234 U. S. 634, 638; *International Harvest Co.* v. *Kentucky*, 234 U. S. 216, 221; *Weeds* v. *United States*, 255 U. S. 109; *Stromberg* v. *California*, 283 U. S. 359, 369; *Smith* v. *Cahoon*, 283 U. S. 553, 564; *Herndon* v. *Lowry*, 301 U. S. 242, 261.

Before leaving the criticism of the construction of the statute urged by the Government, it is noteworthy to point out that the Government does not agree with either the majority or the dissenting opinion below. The dissenting opinion of Judge Biggs makes it clear that he agrees that the statute was not intended to apply to instances of extortion unconnected with the contract of employment (R. 249). His only disagreement with the majority is that the limitation imposed by the majority is too strict and that a foreman is an official of a company close enough to the contract of employment to be within the statute. As stated above, the Government does not agree with either opinion, since the Government's construction of the statute depends clearly and unequivocably upon a determination that the statute is intended to apply to conduct unconnected with the contract of employment, and to anyone without limitation.

CONCLUSION

The construction of the statute adopted by the Court below is in clear accord with the obvious intent of the Congress and is consonant with reason and the limitations on the federal jurisdiction. It leaves the statute sufficient and efficient for the purposes it was intended to serve.

The construction urged by the Government requires a venture into the realm of the imagination in order to torture the plain meaning into absurdity, and to reach a result wholly foreign to the legislative intent.

Respectfully submitted,

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December 11, 1943.

SUPREME COURT OF THE UNITED STATES.

No. 71.—October Term, 1943.

The United States of America, Petitioner, *vs.* Frank Laudani.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[January 3, 1944.]

Mr. Justice Black delivered the opinion of the Court.

Indictments returned in a United States District Court in New Jersey charged that the respondent Laudani, while acting as a company foreman with authority to employ and discharge workers on a public works project financed in part by the United States, had contrary to Section 1 of an Act of June 13, 1934,[1] forced certain of his subordinates to give him part of their wages in order to keep their jobs. Laudani moved to quash assigning as one ground that the indictments failed to charge conduct prohibited by this Act since they did not contain allegations that he was the employer of the coerced men or that he had acted as agent of the employer in forcing the payments. The gist of his contention was that the prohibition of the Act extends only to employers and persons who act in concert with them. The District Court concluded that the Act applied to a foreman such as Laudani, overruled his motion, and a jury convicted him. The Circuit Court of Appeals accepted Laudani's contention, reversed the judgment, and directed that the indictments be quashed. 134 F. 2d 847. The public importance of the question presented prompted us to grant certiorari.

Both the language and history of the Kickback Act argue against the conclusion that Congress intended its prohibition to

[1] This Act is commonly known as the "Kickback" Act. Section 1 provides that, "Whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both." 48 Stat. 948; U. S. C. Title 40, § 276b.

apply only to employers and not to foremen who exercise many of the powers of employers. The Act punishes "whoever" shall induce any person employed on a federally financed work "to give up any part of the compensation to which he is entitled under his contract of employment" by "force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever."[2] The sweep of the word "whoever", if that word stood alone, would be wide enough to include not only an employer but any other person. And the coercive methods of inducement expressly prohibited by the Act are methods in which at least some persons other than employers could engage without legal cause or excuse.

The Circuit Court of Appeals pointed out, however, that if the word "whoever" be given its broadest scope the Act might include common blackmailers who have no relationship to their victims' employment. In an effort to avoid what it considered to be such an extreme application of the Act, the Court focused attention on the clause "to give up any part of the compensation to which he is entitled under his contract of employment." Viewing this clause as proof that the purpose of Congress was to protect the employees' contractual rights to receive wages from their employer, the Court reasoned that no one but the employer or one acting on his behalf possessed "the requisite privity of contract" with the employees to be capable of impairing these rights. Having thus emphasized the Congressional reference to a "contract of employment", the Court stated broadly that, "What happens to the compensation after the employee has received it in full, and wholly without relation to or effect upon his contract of employment, is a matter with which this statute does not purport to deal."

The Court's statement might have been pertinent had the indictments here been against a common blackmailer, extortioner, or some other person not alleged to have been vested by the employer with power to fix and terminate the employer-employee status. But we think that the coerced surrender of wages by employees at the instance of a company foreman given authority by his employer to hire and discharge them cannot properly be said to bear no relation to or have no effect upon their contracts of employment, especially where, as here alleged, the surrender

[2] *Ibid.*

of wages was induced by the foreman's express threat to dismiss all employees who did not comply with his demand. Execution of such a threat against employees unwilling to pay would immediately and completely have terminated their employment contracts. We find nothing in the Act which suggests that, under these circumstances, a foreman must be deemed incapable of violating its provisions merely because he may not stand in that relationship to employees which the Circuit Court characterized as "privity of contract."

The purpose of the Act under consideration is to extend protection not merely to the legal form of employment contracts but to the substantive rights of workers actually to receive the benefit of the wage schedules which Congress has provided for them. The evil aimed at was the wrongful deprivation of full work payments. The Act was adopted near the bottom of a great business depression as one part of a broad Congressional program the goal of which was to strengthen the domestic economy by increasing the purchasing power of the nation's consumers. To this end, Congress enacted legislation designed to relieve widespread unemployment and enable working people to earn just and reasonable wages. A large program for federal financing of public works was established,[3] and legislation was passed requiring government contractors to pay certain minimum wage rates.[4] It was the purpose of the Kickback Act to assure that the federal funds thus provided for workers should actually be received by them for their own use except where diverted under authority of law or a worker's voluntary agreement.[5]

[3] The grant of money for the work on which Laudani was employed was authorized by Title II of the National Industrial Recovery Act enacted June 16, 1933, near the bottom of the depression. Section 1 of this Act declared that the policy of Congress was "... to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources." 48 Stat. 195.

[4] Title II, Section 206, of the National Industrial Recovery Act of June 16, 1933, provides in part that, "All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure ... that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort ..." 48 Stat. 204-205; U. S. C. Title 40, § 406. See also an Act of March 3, 1931, as amended, commonly known as the Davis-Bacon Act, 46 Stat. 1494; 49 Stat. 1011; 54 Stat. 399; U. S. C. Title 40, §§ 276a-276a-5; Perkins *v.* Lukens Steel Co., 310 U. S. 113, 128.

[5] See Report of the House Committee on the Judiciary on Bill S. 3041, H. Rep. No. 1750, 73d Cong., 2d Sess. The report printed a letter from the

In view of this background, we cannot hold that Congress intended to exclude from the Act's proscription a foreman with the authority Laudani is alleged to have possessed. Foremen vested with full power to employ and discharge subordinates could frustrate the objective of the Act just as effectively as could their employers, and foremen not given such broad powers might nevertheless be able to use their authority to accomplish the same result. That foremen not only could but might do this very thing was testified at Senate hearings when the problem of "kickbacks" was under study.[6] And the members of the Senate Committee on the Judiciary reporting the bill used language broad enough to include foremen among others when they said that hearings had revealed, "that large sums of money have been extracted from the pockets of American labor, to enrich contractors, subcontractors, and their officials."[7]

To hold that a company foreman vested with sufficient power substantially to affect his subordinates' contracts of employment is within the Act's proscription is not to hold that the Act applies to every extortioner, blackmailer, or other person who extracts money from one who has previously received it for labor on a federally financed project. We need not, at this time, attempt to delineate the outside scope of the Act's application. But the purpose of the legislation, no less than its language, shows that the power to employ and discharge brings an employing company's foreman within its prohibition.

The judgment of the Circuit Court of Appeals is reversed, and the cause is remanded to that court for consideration and disposition of other questions not here involved.

Reversed and remanded.

Federal Emergency Administrator of Public Works, Harold L. Ickes, which urged immediate passage of the bill "to prevent a very prevalent evil in the construction industry which, to the extent that it exists on Public Works projects, defeats the purpose of Title II of the National Industrial Recovery Act and the success of our Public Works program."

[6] See, for example, Hearings, Subcommittee of Senate Committee on Commerce, S. Res. 74, 73d Cong., 2d Sess., Vol. I, pp. 790-792, 801, 826.

[7] S. Rep. No. 803, 73d Cong., 2d Sess.